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As Filed with the Securities and Exchange Commission on July 26, 2006

Registration Statement No. 333-

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

FORM S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Dave & Buster's, Inc.
(Exact name of registrant as specified in its charter)

Missouri	**5812**	**43-1532756**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

2481 Mañana Drive
Dallas, TX 75220
(214) 357-9588
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

***For additional registrants, please see "Table of Additional Registrants" on the following page.**

Jay L. Tobin
Senior Vice President and General Counsel
Dave & Buster's, Inc.
2481 Mañana Drive
Dallas, TX 75220
(214) 357-9588
(214) 357-1536 (facsimile)
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies of all communications to:
Bruce H. Hallett
Hallett & Perrin
2001 Bryan Street, Suite 3900
Dallas, Texas 75201
(214) 922-4120
(214) 922-4170 (facsimile)

Approximate date of commencement of proposed sale to the public:
As soon as practicable after this registration statement becomes effective.

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. o

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

CALCULATION OF REGISTRATION FEE

Title Of Each Class Of Securities To Be Registered	Amount To Be Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price(1)	Amount Of Registration Fee
11 1/4% Senior Notes due 2014	$175,000,000	100%	$175,000,000	$18,725

(1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(f) promulgated under the Securities Act of 1933, as amended.

The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to Section 8(a), may determine.

The following subsidiaries of Dave & Buster's, Inc. are guarantors of $175,000,000 aggregate principal amount of 11 1/4% Senior Notes due 2014 and are additional registrants:

TABLE OF ADDITIONAL REGISTRANTS*

Name	State or other jurisdiction of incorporation or organization	Primary Standard Industrial Classifications Code Number	I.R.S. Employer Identification Number
D&B Leasing, Inc.	Texas	5812	75-2955199
D&B Realty Holding, Inc.	Missouri	5812	43-1532957
DANB Texas, Inc.	Texas	5812	75-2617801
Dave & Buster's I, L.P.	Texas	5812	75-2680048
Dave & Buster's Management Corporation, Inc.	Delaware	5812	20-1574573
Dave & Buster's of California, Inc.	California	5812	33-0733010
Dave & Buster's of Colorado, Inc.	Colorado	5812	84-1420593
Dave & Buster's of Florida, Inc.	Florida	5812	58-2223494
Dave & Buster's of Georgia, Inc.	Georgia	5812	58-1979705
Dave & Buster's of Hawaii, Inc.	Hawaii	5812	75-2915058
Dave & Buster's of Illinois, Inc.	Illinois	5812	43-1693115
Dave & Buster's of Kansas, Inc.	Kansas	5812	20-2089073
Dave & Buster's of Maryland, Inc.	Maryland	5812	52-1962723
Dave & Buster's of Nebraska, Inc.	Nebraska	5812	20-2089036
Dave & Buster's of New York, Inc.	New York	5812	13-3959054
Dave & Buster's of Pennsylvania, Inc.	Pennsylvania	5812	36-3919848
Dave & Buster's of Pittsburgh, Inc.	Pennsylvania	5812	74-2932642
Tango Acquisition, Inc.	Delaware	5812	20-1220294
Tango License Corporation	Delaware	5812	20-1657537
Tango of Arizona, Inc.	Delaware	5812	20-1209982
Tango of Arundel, Inc.	Delaware	5812	20-1574690
Tango of Farmingdale, Inc.	Delaware	5812	20-1574594
Tango of Franklin, Inc.	Delaware	5812	20-1574645
Tango of Houston, Inc.	Delaware	5812	20-1574628
Tango of Minnesota, Inc.	Delaware	5812	20-1210011
Tango of North Carolina, Inc.	Delaware	5812	20-1209953
Tango of Sugarloaf, Inc.	Delaware	5812	20-1657553
Tango of Tennessee, Inc.	Delaware	5812	20-1209923
Tango of Westbury, Inc.	Delaware	5812	20-1574610

* The address, including zip code, and telephone number, including area code, of each of the above registrants' principal executive offices are the same as those of Dave & Buster's, Inc.

The information in this prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities, and it is not soliciting an offer to buy, these securities in any state where the offer or sale is not permitted.

Subject to Completion, Dated July 26, 2006

PROSPECTUS

Dave & Buster's, Inc.

Offer to exchange $175,000,000 aggregate principal amount of 11 1/4% Senior Notes due 2014 (which we refer to as the "Restricted Notes") for $175,000,000 aggregate principal amount of 11 1/4% Senior Notes due 2014 which have been registered under the Securities Act of 1933, as amended (which we refer to as the "Exchange Notes").

The exchange offer will expire at 5:00 p.m., New York City time, on , 2006, unless we extend the exchange offer in our sole and absolute discretion.

Terms of the exchange offer:

- We will issue Exchange Notes in exchange for all outstanding Restricted Notes that are validly tendered and not withdrawn prior to the expiration or termination of the exchange offer.
- You may withdraw tenders of Restricted Notes at any time prior to the expiration or termination of the exchange offer.
- The terms of the Exchange Notes are substantially identical to those of the outstanding Restricted Notes, except that the transfer restrictions, registration rights and additional interest provisions relating to the Restricted Notes do not apply to the Exchange Notes.
- The exchange of Restricted Notes for the Exchange Notes will not be a taxable transaction for United States federal income tax purposes, but you should see the discussion under the caption "Material United States federal income tax considerations" for more information.
- We will not receive any proceeds from the exchange offer.
- We issued the Restricted Notes in a transaction not requiring registration under the Securities Act, and as a result, their transfer is restricted. We are making the exchange offer to satisfy your registration rights, as a holder of the Restricted Notes.

There is no established trading market for the Exchange Notes, although the Restricted Notes currently trade on the PORTAL Market. We do not intend to list the Exchange Notes on any securities exchange.

See "Risk factors" beginning on page 14 for a discussion of certain risks that you should consider prior to tendering your outstanding Restricted Notes for exchange.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is , 2006.

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In this prospectus, unless the context otherwise requires, "we," "us," "our," and "Dave & Buster's" refer to Dave & Buster's, Inc. together with its subsidiaries.

NOTICE TO INVESTORS

You should rely only on the information contained in this prospectus or to which we have referred you. We have not authorized anyone to provide you with information that is different. This prospectus may only be used where it is legal to sell these securities. The information in this prospectus may only be accurate as of the date of this prospectus.

The Exchange Notes described in this prospectus have not been recommended by or approved by the Securities and Exchange Commission, or the SEC, or any other federal or state securities commission or regulatory authority, nor has the SEC or any such state securities commission or authority passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

You should not construe the contents of this prospectus as investment, legal or tax advice. You should consult your counsel, accountant and other advisors as to legal, tax, business, financial and related aspects of investing in the Exchange Notes. We are not making any representation to you regarding the legality of an investment in the Exchange Notes by you under appropriate legal investment or similar laws.

In making an investment decision regarding the Exchange Notes offered by this prospectus, you must rely on your own examination of our company and the terms of this exchange offer, including, without limitation, the merits and risks involved. This exchange offer is being made on the basis of this prospectus.

The information contained in this prospectus has been furnished by us and other sources we believe to be reliable. This prospectus contains summaries, believed to be accurate, of some of the terms of specific documents, but reference is made to the actual documents, copies of which will be made available upon request, for the complete information contained in those documents.

FORWARD-LOOKING STATEMENTS

This prospectus includes statements that are, or may deemed to be, "forward-looking statements" within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). These forward-looking statements can be identified by the use of forward-looking terminology, including the terms "believes," "estimates," "anticipates," "expects," "intends," "may," "will" or "should" or, in each case, their negative or other variations or comparable terminology. These forward-looking statements include all matters that are not historical facts. They appear in a number of places throughout this prospectus and include statements regarding our intentions, beliefs or current expectations concerning, among other things, our results of operations, financial condition, liquidity, prospects, growth, strategies and the industry in which we operate.

By their nature, forward-looking statements involve risks and uncertainties because they relate to events and depend on circumstances that may or may not occur in the future. We caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and the development of the industry in which we operate may differ materially from those made in or suggested by the forward-looking statements contained in this prospectus. In addition, even if our results of operations, financial condition and liquidity, and the development of the industry in which we operate are consistent with the forward-looking statements contained in this prospectus, those results or developments may not be indicative of results or developments in subsequent periods.

The following listing represents some, but not necessarily all, of the factors that may cause actual results to differ from those anticipated or predicted:

- our ability to raise and access sufficient capital in the future;
- changes in consumer preferences, general economic conditions or consumer discretionary spending;
- the effect of competition in our industry;
- the impact of federal, state or local government regulations relating to our personnel or the sale of food or alcoholic beverages;
- legislative or regulatory changes;
- additional costs associated with compliance with the Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act") and related regulations and requirements;
- the continued service of key management personnel;
- our ability to attract, motivate and retain qualified personnel;
- our ability to open new high-volume restaurant/entertainment complexes;
- the impact of litigation;
- the impact of increased energy costs;
- diversion of management time as a result of the Transactions;
- changes in accounting principles, policies or guidelines;
- changes in general economic conditions or conditions in securities markets or the banking industry;
- a materially adverse change in the financial condition of Dave & Buster's;
- the outbreak or continuation of war or other hostilities involving the United States;
- other economic, competitive, governmental, regulatory, geopolitical and technological factors affecting operations, pricing and services; and
- potential fluctuations in our quarterly operating results due to seasonality and other factors.

You should also read carefully the factors described in the "Risk factors" section of this prospectus to better understand the risks and uncertainties inherent in our business and underlying any forward-looking statements.

Any forward-looking statements which we make in this prospectus speak only as of the date of such statements, and we undertake no obligation to update such statements. Comparisons of results for current and any prior periods are not intended to express any future trends or indications of future performance, unless expressed as such, and should only be viewed as historical data.

SUMMARY

The following summary highlights information contained elsewhere in this prospectus but does not contain all the information that may be important to you. Before participating in the exchange offer, you should read this entire prospectus, including our consolidated financial statements and the related notes included elsewhere herein. You should also carefully consider the information set forth under "Risk factors." In addition, certain statements include forward-looking information that is subject to risks and uncertainties. See "Forward-looking statements."

Company overview

We are North America's largest operator of large-format, high-volume restaurant/entertainment complexes. Our complexes combine high-quality casual dining with an extensive array of entertainment attractions. Our menu includes a wide variety of moderately-priced food and beverage offerings, and our highly-trained staff provides attentive and friendly service for our guests. Our complexes appeal to a diverse customer base by providing a distinctive entertainment and dining experience in a high-energy, casual setting. Founded in 1982 with a single location, we have since grown to become a leader in the restaurant /entertainment industry, operating 47 units across the United States and Canada.

We currently serve approximately 19 million guests per year, comprised of an almost equal number of men and women. Our complexes cater primarily to adults aged 21 to 44 and operate seven days a week, typically from 11:30 a.m. to midnight on weekdays and 11:30 a.m. to 2:00 a.m. on weekends. Our average complex is 52,000 square feet in size, but the size of our complexes can range between 28,000 and 68,000 square feet, depending on the characteristics of the markets in which they are located. We carefully select the appropriate size and location of our new complexes after thoroughly analyzing a variety of economic, demographic and strategic considerations.

The layout of each complex is designed to maximize guest crossover between its multiple entertainment and dining areas. Each location provides full, sit-down food service not only in the restaurant areas, but also in various locations within the complex. Our menu places special emphasis on quality meals, including gourmet pastas, steaks, sandwiches, salads and an outstanding selection of desserts. We update our menus on a regular basis to reflect current trends and guest favorites. Each of our locations offers full bar service throughout the complex, including over 35 different beers and a wide selection of wine, spirits and non-alcoholic beverages.

Our amusement offerings include state-of-the-art simulators, high-tech video games, traditional pocket billiards and shuffleboard, as well as a variety of redemption games, which dispense coupons that can be redeemed for prizes in our Winner's Circle. Our redemption games include basic games of skill, such as skee-ball and basketball, and the prizes in our Winner's Circle range from small-ticket novelty items to high-end electronics, such as flatscreen televisions.

In addition, each of our locations has multiple special event facilities that are used for hosting private parties, business functions and other corporate sponsored events. We believe our special event facilities provide a highly attractive alternative to traditional restaurants and hotels, which generally do not offer combined entertainment and dining.

We believe that each location's combination of high-quality food and beverages, multiple entertainment attractions, superior service and commitment to casual fun for adults provides a unique dining and entertainment experience for our guests.

The Transactions

Dave & Buster's was acquired on March 8, 2006, by WS Midway Holdings, Inc., a newly-formed Delaware corporation, through the merger (the "Merger") of WS Midway Acquisition Sub, Inc., a

newly-formed Missouri corporation and a direct, wholly-owned subsidiary of WS Midway Holdings, Inc., with and into Dave & Buster's with Dave & Buster's as the surviving corporation. Affiliates of Wellspring Capital Management LLC ("Wellspring") and HBK Investments L.P. ("HBK") control approximately 82% and 18%, respectively, of the outstanding capital stock of WS Midway Holdings, Inc. Although we continue as the same legal entity after the Merger, the accompanying condensed consolidated statements of operations, stockholders equity and cash flows present our results of operations and cash flows for the periods preceding the Merger ("Predecessor") and the period succeeding the Merger ("Successor"), respectively.

On March 8, 2006, the following events occurred, which we refer to in this prospectus, collectively with the Merger, as the "Transactions":

- All outstanding shares of Dave & Buster's common stock (including those issued upon the conversion of our convertible subordinated notes), other than shares held by WS Midway Holdings, Inc. or held by stockholders who perfected their appraisal rights under Missouri law, were converted into the right to receive $18.05 per share without interest, less any applicable withholding taxes;

- All outstanding options or warrants to acquire our common stock were converted into the right to receive an amount in cash equal to the difference between the per share exercise price and $18.05, without interest, less any applicable withholding taxes; and

- To the extent not converted into shares of our common stock, we redeemed for cash our convertible subordinated notes due 2008 and the indenture governing the convertible notes ceased to have any effect.

Wellspring Capital Management LLC

Wellspring is a New York-based private equity firm with more than $2 billion in equity capital under management. The firm takes controlling positions in promising middle-market companies where it can realize substantial value by contributing innovative operating and financing strategies and capital. Wellspring's limited partners include some of the largest and most respected institutional investors in the United States, Canada and Europe. The firm consistently ranks among the top-performing private equity funds specializing in the middle market.

Summary description of the exchange offer

On March 8, 2006, we completed the private offering of $175,000,000 aggregate principal amount of 11 1/4% Senior Notes due 2014. As part of that offering, we entered into a registration rights agreement with the initial purchaser of those Restricted Notes in which we agreed, among other things, to complete an exchange offer for the Restricted Notes. Below is a summary of the exchange offer.

Restricted Notes	$175,000,000 aggregate principal amount of 11 1/4% Senior Notes due 2014 issued on March 8, 2006.
Exchange Notes	$175,000,000 aggregate principal amount of 11 1/4% Senior Notes due 2014, the issuance of which has been registered under the Securities Act of 1933, as amended (the "Securities Act"). The form and terms of the Exchange Notes are identical in all material respects to those of the Restricted Notes, except that the transfer restrictions, registration rights and additional interest provisions relating to the Restricted Notes do not apply to the Exchange Notes.
Exchange offer	We are offering to issue up to $175,000,000 principal amount of the Exchange Notes, in exchange for a like principal amount of the Restricted Notes, to satisfy our obligations under the registration rights agreement that we entered into when the Restricted Notes were issued in reliance upon the exemptions from registration provided by Rule 144A and Regulation S of the Securities Act.
Expiration date; tenders	The exchange offer will expire at 5:00 p.m., New York City time, on , 2006, unless the exchange offer is extended in our sole and absolute discretion. By tendering your Restricted Notes in the exchange offer, you represent to us that:
	• you are not our "affiliate," as defined in Rule 405 under the Securities Act;
	• you are not engaged in, and do not intend to engage in, and have no arrangement or understanding with any person to participate in, a distribution of the Exchange Notes;
	• you are acquiring the Exchange Notes in your ordinary course of business; and

	• if you are a broker-dealer, you will receive the Exchange Notes for your own account in exchange for Restricted Notes that were acquired by you as a result of your market-making or other trading activities and you will deliver a prospectus in connection with any resale of the Exchange Notes you receive. For further information regarding resales of the Exchange Notes by participating broker-dealers, see the discussion under the caption "Plan of distribution."
Withdrawal	You may withdraw any Restricted Notes tendered in the exchange offer at any time prior to 5:00 p.m., New York City time on the applicable expiration date.
Conditions to the exchange offer	The exchange offer is subject to customary conditions, which we may waive. See the discussion below under the caption "The exchange offer—Conditions to the exchange offer" for more information regarding the conditions to the exchange offer.
Procedures for tendering the Restricted Notes	Except as set forth below, a holder of Restricted Notes who wishes to tender notes for exchange must, on or prior to the expiration date of the exchange offer:
	• transmit a properly completed and duly executed letter of transmittal, including all other documents required by the letter of transmittal, to the exchange agent, or
	• if notes are tendered pursuant to the book-entry procedures set forth below, the tendering holder must transmit an agent's message to the exchange agent.
	In addition, either:
	• the exchange agent must receive the certificates for the Restricted Notes and the letter of transmittal;
	• the exchange agent must receive, prior to the expiration date, a timely confirmation of the book-entry transfer of the notes being tendered into the exchange agent's account at DTC, along with the letter of transmittal or an agent's message; or
	• the holder must comply with the guaranteed delivery procedures described in the letter of transmittal.

Special procedures for beneficial owners	If you are a beneficial owner whose Restricted Notes are registered in the name of a broker, dealer, commercial bank, trust company or other nominee, and you wish to tender your Restricted Notes in the exchange offer, you should promptly contact the person in whose name the Restricted Notes are registered and instruct that person to tender on your behalf. Any registered holder that is a participant in DTC's book-entry transfer facility system may make book-entry delivery of the Restricted Notes by causing DTC to transfer the Restricted Notes into the exchange agent's account.
Material federal income tax considerations	The exchange of the Restricted Notes for Exchange Notes in the exchange offer will not be a taxable transaction for United States federal income tax purposes. See the discussion under the caption "Material United States federal income tax considerations" for more information regarding the tax consequences to you of the exchange offer.
Use of proceeds	We will not receive any proceeds from the exchange offer.
Exchange agent	The Bank of New York Trust Company, N.A. is the exchange agent for the exchange offer. You can find the address and telephone number of the exchange agent below under the caption "The exchange offer—Exchange agent."
Resales	Based on interpretations of the Securities Act by the staff of the SEC, as detailed in a series of no-action letters issued to third parties, we believe that the Exchange Notes issued in the exchange offer may be offered for resale, resold or otherwise transferred by you without compliance with the registration and prospectus delivery requirements of the Securities Act as long as: • you are acquiring the Exchange Notes in the ordinary course of your business; • you are not participating, do not intend to participate and have no arrangement or understanding with any person to participate, in a distribution of the Exchange Notes; and • you are not an affiliate of ours.

	If you are an affiliate of ours, or are engaged in or intend to engage in, or have any arrangement or understanding with any person to participate in, the distribution of the Exchange Notes: • you cannot rely on the applicable interpretations of the staff of the SEC; • you will not be entitled to participate in the exchange offer; and • you must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any resale transaction. See the discussion below under the caption "The exchange offer—Consequences of exchanging or failing to exchange Restricted Notes" for more information.
Broker-dealer	Each broker or dealer that receives Exchange Notes for its own account in exchange for Restricted Notes that were acquired as a result of market-making or other trading activities must acknowledge that it will comply with the registration and prospectus delivery requirements of the Securities Act in connection with any offer to resell or other transfer of the Exchange Notes issued in the exchange offer, including the delivery of a prospectus that contains information with respect to any selling holder required by the Securities Act in connection with any resale of the Exchange Notes. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of Exchange Notes received in exchange for Restricted Notes which were received by such broker-dealer as a result of market making activities or other trading activities. We have agreed that for a period of up to 120 days after the consummation of the exchange offer, we will make this prospectus available to any broker-dealer for use in connection with any such resale. See "Plan of distribution" for more information.

Registration rights agreement	When we issued the Restricted Notes on March 8, 2006, we entered into a registration rights agreement with the initial purchaser of the Restricted Notes. Under the terms of the registration rights agreement, we agreed to file with the SEC, and cause to become effective, a registration statement relating to an exchange of the Restricted Notes for the Exchange Notes. We also agreed to file a shelf registration statement under certain circumstances. If we fail to satisfy these obligations, we have agreed to pay additional interest to the holders of the Restricted Notes under certain circumstances. See "Description of the Exchange Notes" and "Registration rights."

Consequences of not exchanging Restricted Notes

If you do not exchange your Restricted Notes in the exchange offer, your Restricted Notes will continue to be subject to the restrictions on transfer currently applicable to the Restricted Notes. In general, you may offer or sell your Restricted Notes only:

- if they are registered under the Securities Act and applicable state securities laws;
- if they are offered or sold under an exemption from registration under the Securities Act and applicable state securities laws; or
- if they are offered or sold in a transaction not subject to the Securities Act and applicable state securities laws.

We do not currently intend to register the Restricted Notes under the Securities Act. Under some circumstances, however, holders of the Restricted Notes, including holders who are not permitted to participate in the exchange offer or who may not freely resell Exchange Notes received in the exchange offer, may require us to file, and to cause to become effective, a shelf registration statement covering resales of Restricted Notes by these holders. For more information regarding the consequences of not tendering your Restricted Notes and our obligation to file a shelf registration statement, see "The exchange offer—Consequences of exchanging or failing to exchange Restricted Notes" and "Description of the Exchange Notes—Registration rights."

Summary description of the Exchange Notes

The following summary contains basic information about the Exchange Notes and is not intended to be complete. For a more detailed description of the terms of the Exchange Notes, please refer to the section entitled "Description of the Exchange Notes" in this prospectus.

Issuer	Dave & Buster's, Inc.
Exchange Notes	$175,000,000 aggregate principal amount of 11 1/4% Senior Notes due 2014.
Maturity	March 15, 2014.
Interest payment dates	March 15 and September 15, commencing September 15, 2006.
Optional redemption	The Exchange Notes will be redeemable at our option, in whole or in part, at any time on or after March 15, 2010, at the redemption prices set forth in this prospectus, together with accrued and unpaid interest, if any, to the date of redemption. At any time prior to March 15, 2009, we may redeem up to 35% of the original principal amount of the Exchange Notes with the proceeds of one or more equity offerings at a redemption price of 111.25% of the principal amount of the Exchange Notes, together with accrued and unpaid interest, if any, to the date of redemption.
Mandatory offers to purchase	The occurrence of a change of control will be a triggering event requiring us to offer to purchase from you all or a portion of your Exchange Notes at a price equal to 101% of their principal amount, together with accrued and unpaid interest, if any, to the date of purchase. Certain asset dispositions will be triggering events which may require us to use the proceeds from those asset dispositions to make an offer to purchase the Exchange Notes at 100% of their principal amount, together with accrued and unpaid interest, if any, to the date of purchase, if such proceeds are not otherwise used within the time periods specified herein to, among other things, repay indebtedness of our company or any Restricted Subsidiary (other than disqualified stock or any subordinated obligations of our company or any guarantor), to repay indebtedness under our senior credit facility (with a corresponding reduction in commitment) or to invest in additional assets related to our business.

Guarantees

On the issue date, the Exchange Notes will be guaranteed on a senior basis by all our domestic subsidiaries. The Exchange Notes will also be guaranteed on a senior basis by all of our future Restricted Subsidiaries, other than our foreign subsidiaries. The guarantees will be unsecured senior indebtedness of our subsidiary guarantors and will have the same ranking with respect to indebtedness of our subsidiary guarantors as the Exchange Notes will have with respect to our indebtedness.

For the 54 day period ended April 30, 2006 (Successor), our non-guarantor subsidiaries represented approximately 2.1% of our net revenues, approximately 3.5% of our operating income and approximately 2.3% of our EBITDA. For the 37 day period from January 30, 2006 to March 7, 2006 (Predecessor), our non-guarantor subsidiaries represented approximately 1.7% of our net revenues, approximately 2.1% of our operating income and approximately 1.6% of our EBITDA. As of April 30, 2006, our non-guarantor subsidiaries collectively had approximately $5.6 million of outstanding liabilities, including trade payables, all of which would have been structurally senior to the Exchange Notes.

Ranking

The Exchange Notes will:

- be our general unsecured obligations;
- rank equally in right of payment with all our existing and future senior debt;
- be senior in right of payment to all of our existing and future senior subordinated and subordinated debt; and
- be structurally subordinated to all the existing and future liabilities (including trade payables) of each of our subsidiaries that do not issue guarantees of the Exchange Notes.

Since the Exchange Notes are unsecured, in the event of bankruptcy, liquidation, reorganization or other winding up of our company or the guarantors or upon a default in payment with respect to, or the acceleration of, any Indebtedness under the senior secured credit agreement or other senior secured indebtedness, the assets of our company and the guarantors that secure other senior secured indebtedness will be available to pay obligations on the Exchange Notes and the guarantees only after all Indebtedness under such other secured indebtedness has been repaid in full from such assets.

As of April 30, 2006:

- we had approximately $237.4 million of total senior indebtedness (including the Restricted Notes);

- we had approximately $62.4 million of secured indebtedness under our senior secured credit facility, excluding an additional $6.2 million represented by letters of credit under the senior secured credit facility that had a prior secured claim to the collateral securing such indebtedness, and had additional commitments under the senior secured credit facility available to us of $41.4 million subject to meeting certain conditions, all of which would be secured if borrowed; and

- We had a liability of approximately $51.7 million related to a settlement agreement with dissenting shareholders. We expect to have sufficient credit availability and to fund the payment of this liability through additional borrowings under our senior secured credit facility prior to August 15, 2006.

Covenants

We will issue the Exchange Notes under an indenture with The Bank of New York Trust Company, N.A., as trustee. The indenture contain covenants that, among other things, limit our ability and the ability of our restricted subsidiaries (as defined under the heading "Description of the Exchange Notes") to:

- incur, assume or guarantee additional indebtedness;

- issue redeemable stock and preferred stock;

- repurchase capital stock;

- make other restricted payments, including without limitation, paying dividends and making investments;

- create liens;

- redeem debt that is junior in right of payment to the Exchange Notes;

- sell or otherwise dispose of assets, including capital stock of subsidiaries;

- enter into agreements that restrict dividends from subsidiaries;

- enter into mergers or consolidations;

- enter into transactions with affiliates;

- guarantee indebtedness;

- enter into sale/leaseback transactions; and

- enter into new lines of business.

These covenants are subject to a number of important exceptions and qualifications. For more details, see "Description of the Exchange Notes."

Risk factors

In evaluating an investment in the Exchange Notes, prospective investors should carefully consider, along with the other information in this prospectus, the specific factors set forth under "Risk factors" for risks associated with an investment in the Exchange Notes.

Summary consolidated historical and pro forma financial and other data

Set forth in the following table are our summary consolidated historical and pro forma and other data. Accounting principles generally accepted in the United States require operating results for Dave & Buster's prior to the Merger completed March 8, 2006 to be presented as the Predecessor's results in the historical financial statements and include the 37 days from January 30, 2006 to March 7, 2006. Operating results subsequent to the Merger for Dave & Buster's are presented as the Successor's results in the historical financial statements and include 54 days from March 8, 2006 to April 30, 2006.

The statements of operations and cash flows data for each of the three fiscal years in the period ended January 29, 2006 and the balance sheet data as of January 29, 2006 and January 30, 2005 were derived from the Predecessor's audited consolidated financial statements included elsewhere in this prospectus. The statements of operations and cash flows data for the 54 days ended April 30, 2006 (Successor) and the 37 days ended March 7, 2006 (Predecessor) and for the thirteen weeks ended May 1, 2005 (Predecessor) and the balance sheet data as of April 30, 2006 were derived from our unaudited consolidated financial statements included elsewhere in this prospectus and, in the opinion of management, include all normal recurring adjustments necessary to present fairly the data for such periods and as of such dates. Operating results for any interim periods presented are not necessarily indicative of the results that may be expected for fiscal 2006.

The following table also presents unaudited summary pro forma statement of operations data for the year ended January 29, 2006 and the 13 weeks in the period ended April 30, 2006, which have been prepared assuming the Merger had occurred on January 31, 2005. The summary pro forma data does not purport to represent what our results would have been if the Merger had occurred on that date, nor does the data purport to represent the results of operations for any future period. The pro forma adjustments are based on available information and certain assumptions that we believe are reasonable.

The summary consolidated historical and pro forma financial and other data should be read in conjunction with "—The Transactions," "Selected historical consolidated financial and other data," "Management's discussion and analysis of financial condition and results of operations" and our historical consolidated financial statements and the notes related thereto, included elsewhere in this prospectus. This consolidated historical and pro forma financial and other data is not indicative of our future financial position or operating results.

	Fiscal year ended							
	February 1, 2004(1) (Predecessor)	January 30, 2005(4) (Predecessor)	January 29, 2006(5) (Predecessor)	January 29, 2006 (Proforma)	Thirteen weeks ended May 1, 2005 (Predecessor)	37 Day Period from January 30, 2006 March 7, 2006 (Predecessor)	54 Day Period from March 8, 2006 to April 30, 2006(6) (Successor)	Thirteen weeks ended April 30, 2006 (Proforma)
	(Dollars in thousands)							
Statement of operations data:								
Revenues:								
Food and beverage revenues	$ 191,881	$ 209,689	$ 253,996	$ 253,996	$ 61,392	$ 27,562	$ 41,502	$ 69,064
Amusement and other revenues	170,941	180,578	209,456	209,456	54,343	22,847	34,932	57,779
Total revenues	362,822	390,267	463,452	463,452	115,735	50,409	76,434	126,843
Cost of food and beverage	46,354	51,367	61,818	61,818	16,028	7,111	10,755	17,866
Cost of amusement and other	21,788	21,704	25,475	25,475	6,477	3,183	4,659	7,842
Total cost of products	68,142	73,071	87,293	87,293	22,505	10,294	15,414	25,708
Operating payroll and benefits	105,027	110,542	132,384	132,384	32,775	14,293	22,028	36,321
Other store operating expenses	108,413	119,509	151,677	153,602	33,988	15,577	23,573	39,361
General and administrative expenses	25,033	26,221	31,158	34,959	7,692	3,480	5,272	8,752
Depreciation and amortization expense	32,741	34,238	42,616	47,212	9,741	4,328	6,741	11,312
Startup costs	—	1,295	5,325	5,325	78	880	1,406	2,373
Total operating costs	339,356	364,876	450,453	460,775	106,779	48,852	74,434	123,827
Operating income	23,466	25,391	12,999	2,677	8,956	1,557	2,000	3,016
Interest expense, net	6,926	5,586	6,695	29,003	1,773	649	5,244	7,261
Income (loss) before provision (benefit) for income taxes	16,540	19,805	6,304	(26,326)	7,183	908	(3,244)	(4,245)
Provision (benefit) for income taxes	5,619	6,925	2,016	(10,001)	2,622	422	(1,216)	(1,644)
Net income (loss)	$ 10,921	$ 12,880	$ 4,288	$ (16,325)	$ 4,561	$ 486	$ (2,028)	$ (2,601)
Statement of cash flow data:								
Cash provided by (used in):								
Operating activities	$ 43,670	$ 49,064	$ 65,423		$ 13,369	$ 10,741	$ 5,189	
Investing activities	(27,421)	(81,772)	(63,271)		(10,849)	(10,600)	(280,589)	
Financing activities	(16,729)	37,160	(5,957)		(4,967)	89	282,911	
Balance sheet data (as of end of period):								
Cash and cash equivalents	6,935	11,387	7,582		5,177		15,323	
Working capital (deficit)	(220)	(7,656)	(37,206)		(5,324)		(13,977)	
Property and equipment, net	291,473	331,478	374,616		332,111		345,185	
Total assets	340,201	401,171	423,062		397,471		542,894	
Total debt(7)	53,534	88,143	80,175		82,854		289,147	
Stockholders' equity	179,784	196,945	205,220		202,204		106,221	
Other data:								
EBITDA(2)	56,207	59,629	55,615	49,889	18,697	5,885	8,741	14,545
Cash interest expense(3)	6,684	5,476	6,099		1,537	622	3,793	
Capital expenditures	24,292	34,234	62,066		10,866	10,600	5,955	
Number of complexes at end of period	33	43	46		43	46	47	

(1) As more fully described in "Management's discussion and analysis of financial condition and results of operations," we have restated the previously issued financial statements for these periods for certain lease accounting issues.

(2) "EBITDA" is calculated as net income, plus interest and taxes, plus depreciation and amortization expense. Pro forma adjustments related to the unaudited pro forma consolidated statement of operations have been computed assuming the Transactions occurred as of January 31, 2005. See note (6) below and the "Unaudited pro forma consolidated financial information" section and related notes thereto. EBITDA is presented because certain investors use it as a measure of a company's historical operating performance and its ability to service and incur debts. However, EBITDA, is not a measure prepared in accordance with GAAP. Accordingly, this measure should not be considered in isolation from, as an alternative

to or as more meaningful than net income, cash flows or other income data (as calculated in accordance with GAAP) or as a measure of liquidity. EBITDA, as presented, may not be comparable to similarly-titled measures reported by other companies. Our calculation of EBITDA, for the periods presented is set forth below:

	Fiscal year ended							
	February 1, 2004 (Predecessor)	January 30, 2005 (Predecessor)	January 29, 2006 (Predecessor)	January 29, 2006 (Proforma)	Thirteen weeks ended May 1, 2005 (Predecessor)	37 Day Period from January 30, 2006 to March 7, 2006 (Predecessor)	54 Day Period from March 8, 2006 to April 30, 2006 (Successor)	Thirteen weeks ended April 30, 2006 (Proforma)
	(Dollars in thousands)							
Net income (loss)	$ 10,921	$ 12,880	$ 4,288	$ (16,325)	$ 4,561	$ 486	$ (2,028)	$ (2,601)
Interest expense, net	6,926	5,586	6,695	29,003	1,773	649	5,244	7,261
Provision (benefit) for income taxes	5,619	6,925	2,016	(10,001)	2,622	422	(1,216)	(1,427)
Depreciation and amortization expense	32,741	34,238	42,616	47,212	9,741	4,328	6,741	11,312
EBITDA	$ 56,207	$ 59,629	$ 55,615	$ 49,889	$ 18,697	$ 5,885	$ 8,741	$ 14,545

(3) "Cash interest expense" represents interest expense for the period less amortization of debt, original issue discount (if any), and issuance costs, plus interest capitalized during the period.

(4) On November 1, 2004, we completed the acquisition of nine Jillian's locations, pursuant to an asset purchase agreement, for cash and the assumption of certain liabilities. The results of the acquired complexes are included in our consolidated results beginning on the date of acquisition.

(5) On August 28, 2005, a subsidiary of ours closed the acquired Jillian's complex located at the Mall of America in Bloomington, Minnesota due to continuing operating losses attributable to this complex and unsuccessful efforts to renegotiate the terms of the related leases. As a result of the closing, we recorded pre-tax charges of approximately $3,000 in the initial thirty-nine weeks of fiscal 2005. Additional depreciation, amortization and impairment of the assets which were abandoned and whose carrying value was not recoverable as of July 31, 2005 represented approximately $2,500 of the charge and is included in depreciation and amortization expense in the consolidated statements of operations for the fiscal year ended January 29, 2006, included elsewhere herein. We also incurred expenses of approximately $500 related to severance and other costs required to close the complex.

(6) The Transactions were accounted for as a purchase in conformity with Statement of Financial Accounting Standards, of SFAS, No. 141, "Business Combinations." In connection with the preliminary purchase price allocation, we have made estimates of the fair values of our assets and liabilities based upon assumptions that we believe are reasonable, and in some cases, preliminary valuation results from independent valuation specialists.

(7) Total debt as of April 30, 2006 includes $51,733 payable to dissenting shareholders, which will be paid from proceeds from a delayed draw down on our term loan and proceeds from our revolving credit facility.

RISK FACTORS

An investment in the Exchange Notes involves a high degree of risk. You should carefully consider the risks described below as well as other information included in this prospectus before making an investment decision. If any of the events described in the risk factors below occur, these could have a material adverse effect on our business, financial condition, operating results and prospects, which in turn could adversely affect our ability to repay the Exchange Notes. This prospectus also contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including the risks described below.

Risks related to our business

Our level of indebtedness could adversely affect our ability to raise additional capital to fund our operations, limit our ability to react to changes in the economy or our industry and prevent us from meeting our obligations under the Exchange Notes.

We are significantly leveraged and our total indebtedness (including $51.7 million payable to dissenting shareholders on or before August 15, 2006) was approximately $289.1 million as of April 30, 2006. The following chart shows our indebtedness and certain other information as of April 30, 2006:

	As of April 30, 2006
	(In thousands)
Senior secured credit facility	
Revolving credit facility	$ 12,414
Term loan	50,000
Restricted Notes	175,000
	237,414
Payable to dissenting shareholders(1)	51,733
Total debt	$ 289,147
Stockholder's equity	$ 106,221

(1) The payable to dissenting shareholders will be paid from proceeds from a delayed drawdown on our term loan and proceeds from our revolving credit facility.

Our substantial indebtedness could have important consequences for you, including the following:

- our ability to obtain additional debt or equity financing for working capital, capital expenditures, product development, debt service requirements, acquisitions and general corporate or other purposes may be limited;
- a substantial portion of our cash flows from operations will be dedicated to the payment of principal and interest on our indebtedness and will not be available for other purposes, including our operations, capital expenditures and future business opportunities;
- the debt service requirements of our other indebtedness could make it more difficult for us to satisfy our financial obligations, including those related to the Exchange Notes;
- certain of our borrowings, including borrowings under our senior credit facility, are at variable rates of interest, exposing us to the risk of increased interest rates;
- our ability to adjust to changing market conditions may be limited and we may be placed at a competitive disadvantage compared to our less-leveraged competitors; and
- we may be vulnerable in a downturn in general economic conditions or in our business, or we may be unable to carry on capital spending that is important to our growth.

Subject to restrictions in the indenture governing the Exchange Notes and in our senior secured credit facility, we may incur additional indebtedness, which could increase the risks associated with our already substantial indebtedness. Subject to certain limitations, we have the ability to borrow additional funds under our revolving credit facility. If we incur any additional indebtedness or obligations that rank equally in right of payment with the Exchange Notes, including trade payables, the holders of those obligations will be entitled to share ratably with you in any proceeds distributed in connection with any insolvency, liquidation, reorganization, dissolution or other winding-up of our business. This may have the effect of reducing the amount of proceeds paid to you.

Our results of operations are dependent upon discretionary spending by consumers.

Our results of operations are dependent upon discretionary spending by consumers, particularly by consumers living in the communities in which our complexes are located. A significant weakening in any of the local economies in which we operate may cause our guests to curtail discretionary spending, which in turn could have a material adverse effect on our profitability. The ongoing conflict in Iraq, potential for future terrorist attacks, the national and international responses thereto and other acts of war or hostility may create economic and political uncertainties that could have a material adverse effect on our business, results of operations and financial condition in ways we currently cannot predict. Furthermore, increases in gasoline and other energy costs could lead to a decline in discretionary spending and have a material adverse effect on our profitability.

We operate a limited number of complexes, and new complexes require significant investment.

We currently operate 47 complexes. The combination of the relatively limited number of locations and the significant investment associated with each new complex may cause our operating results to fluctuate significantly. Due to this relatively limited number of locations, poor results of operations at any single complex could materially affect our profitability. Historically, new 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 revenues will be meaningful. Additionally, because of the substantial up-front financial requirements to open new complexes, the investment risk related to any single complex is much larger than that associated with most other companies' restaurant or entertainment venues.

We may not be able to compete favorably in the highly competitive out-of-home and home-based entertainment market.

The out-of-home entertainment market is highly competitive. There are a great number of businesses that compete directly and indirectly with us. Many of these entities are larger and have significantly greater financial resources and a greater number of units than we have. Although we believe most of our competition comes from localized single attraction facilities that offer a limited entertainment package, we may encounter increased competition in the future, which may have an adverse effect on our profitability. In addition, the legalization of casino gambling in geographic areas near any current or future complex would create the possibility for entertainment alternatives, which could have a material adverse effect on our business and financial condition. In addition, we may also face increased competition from home-based forms of entertainment such as internet gaming and home movie delivery.

Our operations are subject to many government laws, regulations and other requirements and if we fail to comply with them our business and financial condition could be adversely affected.

Various federal, state and local laws and permitting and license requirements affect our business, including those enforced by alcoholic beverage control, regulations and other amusement, environmental, health and safety and fire agencies in the state, county or municipality in which each complex is located. For example, each complex is required to obtain a license to sell alcoholic

beverages on the premises from a state authority and, in certain locations, county or municipal authorities as well. The failure to receive or retain a liquor license, or any other required permit or license, at a particular location, or to continue to qualify for or renew our licenses, could materially adversely affect our operations and our ability to obtain such a license or permit at other locations. The failure to comply with other applicable federal, state or local laws, such as federal and state wage and hour, minimum wage and overtime pay laws, may also materially adversely affect our business and financial condition.

We may face difficulties in attracting and retaining qualified employees.

The operation of our business requires qualified executives, managers and skilled employees. From time to time there may be a shortage of skilled labor in certain of the communities in which we are located. While we believe that we will continue to be able to attract, train and retain qualified employees, shortages of skilled labor will make it increasingly difficult and expensive to attract, train and retain the services of a satisfactory number of qualified employees. In addition, our future success will continue to depend largely on the efforts and abilities of our senior management. Our ability to attract and retain qualified employees or the loss of the services of members of our senior management for any reason could materially adversely affect our business, results of operations and financial condition.

Our growth depends upon our ability to open new complexes.

Our ability to expand 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 will be able to expand or that new complexes, if developed, will perform in a manner consistent with our most recently opened complexes or make a positive contribution to our operating performance.

Local conditions, events and natural disasters could adversely affect our business.

Certain of the regions in which our complexes are located have been, and may in the future be, subject to adverse local conditions, events or natural disasters, such as earthquakes and hurricanes. Depending upon its magnitude, a natural disaster could severely damage our complexes, which could adversely affect our business, financial condition and operations. We currently maintain property and business interruption insurance through our aggregate property policy for each of our complexes. However, there is no assurance that our coverage will be sufficient if there is a major disaster. In addition, upon the expiration of our current policies, we cannot assure you that adequate coverage will be available at economically justifiable rates, if at all.

We are controlled by affiliates of Wellspring, whose interests may not be aligned with yours.

Affiliates of Wellspring indirectly control approximately 82% of our outstanding common stock. Wellspring is able to elect a majority of our directors and thereby has the power to control our affairs and policies, including the appointment of management, the issuance of additional equity interests, equity repurchase programs and the declaration and payment of dividends or distributions.

Circumstances may occur in which the interests of Wellspring could be in conflict with your interests. For example, if we encounter financial difficulties or are unable to pay our debts as they mature, Wellspring might pursue strategies that favor equity investors over debt investors. Wellspring may also have an interest in pursuing acquisitions, divestitures, financing or other transactions that, in their judgment, could enhance their equity investments, even though such transactions might involve

risk to you as a holder of the Exchange Notes. Additionally, Wellspring is not prohibited from making investments in any of our competitors.

Our operations are susceptible to changes in product costs, which could adversely affect our operating results.

Our profitability depends in part on our ability to anticipate and react to changes in product costs. Various factors beyond our control, including adverse weather conditions, governmental regulations, production, availability and seasonality may affect our food costs or cause a disruption in our supply. The availability of new amusement offerings, the cost and availability of redemption items that appeal to our guests and the market demand for new games can adversely impact our cost to acquire and operate new amusements. We cannot predict whether we will be able to anticipate and react to changing food, beverage and amusements costs by adjusting our purchasing practices, menu and game prices, and a failure to do so could have a material adverse effect on our operating results.

Complaints or litigation may adversely affect our business.

Occasionally, our guests file complaints or lawsuits against us alleging that we are responsible for some illness or injury they suffered at or after a visit to our complexes. We are also subject to a variety of other claims in the ordinary course of business, including personal injury claims, contract claims and employment-related claims. The restaurant industry has also been subject to a growing number of claims that the menus and actions of restaurant chains have led to the obesity of certain of their guests. In addition, we are subject to "dram shop" statutes and are currently the subject of certain lawsuits that allege violations of these statutes. These statutes generally allow a person injured by an intoxicated person to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. Recent litigation against restaurant chains has resulted in significant judgments and settlements under dram shop statutes. Because such a plaintiff seeks punitive damages, which may not be covered by insurance, such litigation could have an adverse impact on our financial condition and results of operations. Regardless of whether any claims against us are valid or whether we are liable, claims may be expensive to defend and may divert time and money away from our operations and hurt our performance. A judgment significantly in excess of our insurance coverage could have a material adverse effect on our financial condition or results of operations. Further, adverse publicity resulting from these allegations may materially affect us and our complexes.

We may not be able to renew real property leases on current favorable terms.

Of the 47 complexes that we currently operate in the United States and Canada, 43 are operated on premises under existing leases and four are owned properties. Certain of our leases are long-term leases at rents we believe to be below current market rates. Other such leases have rents fixed at a percentage of the revenue generated by the complexes on the leased premises. We may choose not to renew, or may not be able to renew, certain of such existing leases if the capital investment then required to maintain the complexes at the leased locations is not justified by the return on the required investment. If we are not able to renew our leases at rents that allow such complexes to remain profitable as their terms expire, the number of our complexes may decrease, resulting in lower revenue from our operations, which may impact our ability to meet our financial goals.

Our success depends in part on our ability to protect our intellectual property rights, but our intellectual property may be misappropriated or we may be subject to infringement claims by third parties.

We currently rely on a combination of registered and unregistered trademark, copyright, patent rights and domain names to protect certain aspects of our business. While we attempt to ensure that our intellectual property and similar proprietary rights are protected and that the third party rights we need are licensed to us when entering into business relationships, there can be no assurance that any of our applications for protection of our intellectual property rights will be approved or that third parties

will not take actions that could have a material adverse effect on our rights or the value of our intellectual property, similar proprietary rights or reputation. Furthermore, we can give you no assurance that claims or litigation asserting infringement of intellectual property rights will not be initiated by third parties seeking damages, the payment of royalties or licensing fees or that we would prevail in any litigation or be successful in preventing any such judgment. In the future, we may also rely on litigation to enforce our intellectual property rights and contractual rights, and, if not successful, we may not be able to protect the value of our intellectual property. Any litigation could be protracted and costly and could have a material adverse effect on our business and results of operations, regardless of its outcome. Infringement claims against us could also result in costly and burdensome litigation, require us to enter into royalty or other licensing agreements, require us to pay damages, harm our reputation, require us to redesign or rename our complexes and products or prevent us from doing business using certain trade names. Although we believe that our intellectual property rights are sufficient to allow us to conduct our business without incurring liability against third parties, our products may infringe on the intellectual property rights of third parties, and our intellectual property rights may not have the value we believe them to have.

Increases in labor costs could harm our business.

From time to time, the U.S. Congress and the states consider increases in the applicable minimum wage. The out-of-home entertainment industry is intensely competitive, and we may not be able to transfer any resulting increase in operating costs to our guests in the form of price increases, or to otherwise adjust to these increases, which could have a material adverse effect on the results of our operations.

Increases in energy costs could harm our business.

Our success depends in part on our ability to absorb increases in utility costs. Most of our complexes have experienced increases in utility prices. If these increases should continue, and if we are unable to transfer these costs increases to our guests in the form of price increases, they will have an adverse effect on our profitability.

Our financial results are subject to quarterly fluctuations and the seasonality of our business.

Our operating results may fluctuate significantly from period to period, and the results for one period may not be indicative of results for other periods. Our operating results may also fluctuate significantly because of several factors, including the frequency and popularity of sporting events and year-end holidays (including which day of the week the events occur), new complex openings and related expenses and weather conditions.

We expect seasonality will continue to be a factor in our results of operations. Historically, our revenues have been substantially higher in the fourth quarter driven in part by the increased number of holiday parties held during that time of year. Our revenues and profitability have been lower during the third quarter with the first and second quarter being somewhat similar in results, and we expect similar results to continue in the future. See "Management's discussion and analysis of financial condition and results of operations—Overview—Quarterly fluctuations, seasonality and inflation."

The timing of new complex openings may also result in significant fluctuations in our quarterly performance. We typically incur most preopening costs for a new complex within the two months immediately preceding, and the month of, the complex's opening. In addition, the labor and operating costs for a newly opened complex during the first three to six months of operation, including preopening costs, are materially greater than what can be expected after that time, both in aggregate dollars and as a percentage of its revenues. Our growth, operating results and profitability will depend to a large degree on our ability to increase the number of our complexes.

Risks related to the exchange offer and holding the Exchange Notes

We may not be able to generate sufficient cash to service all of our indebtedness, including the Exchange Notes, and may be forced to take other actions to satisfy our obligations under our indebtedness, which may not be successful.

Our ability to make scheduled payments or to refinance our debt obligations depends on our financial and operating performance, which is subject to prevailing economic and competitive conditions and to certain financial, business and other factors beyond our control. We cannot assure you that we will maintain a level of cash flows from operating activities sufficient to permit us to pay the principal, premium, if any, and interest on our indebtedness, including the Exchange Notes. See "Forward-looking statements" and "Management's discussion and analysis of financial condition and results of operations—Liquidity and capital resources."

If our cash flows and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay capital expenditures, sell assets or operations, seek additional capital or restructure or refinance our indebtedness, including the Exchange Notes. We cannot assure you that we would be able to take any of these actions, that these actions would be successful and permit us to meet our scheduled debt service obligations or that these actions would be permitted under the terms of our existing or future debt agreements, including the senior credit facility or the indenture that will govern the Exchange Notes. In the absence of such operating results and resources, we could face substantial liquidity problems and might be required to dispose of material assets or operations to meet our debt service and other obligations. The senior secured credit facility and the indenture that governs the Exchange Notes will restrict our ability to dispose of assets and use the proceeds from the disposition. We may not be able to consummate those dispositions or to obtain the proceeds which we could realize from them and these proceeds may not be adequate to meet any debt service obligations then due. See "Description of other indebtedness" and "Description of the Exchange Notes."

If we cannot make scheduled payments on our debt, we will be in default and, as a result:

- our debt holders could declare all outstanding principal and interest to be immediately due and payable;
- the lenders under our senior secured credit facility could terminate their commitments to lend us money and foreclose against the assets securing their loans; and
- we could be forced into bankruptcy or liquidation, which could result in you losing your investment in the Exchange Notes.

Despite current indebtedness levels, we and our subsidiaries may still be able to incur substantially more debt in the future, which could further exacerbate the risks described above. The terms of the indenture do not fully prohibit us or our subsidiaries from doing so.

If we incur any additional indebtedness that ranks equally with the Exchange Notes, the holders of that debt will be entitled to share ratably with you in any proceeds distributed in connection with any insolvency, liquidation, reorganization, dissolution or other winding-up of us. This may have the effect of reducing the amount of proceeds paid to you. Additionally, our senior secured credit facility provides commitments of up to $160.0 million in the aggregate, including $62.4 million of which was outstanding at April 30, 2006. We also had an additional $6.2 million in letters of credit outstanding as of such date. All of those borrowings are secured indebtedness. The subsidiaries that guarantee the Exchange Notes are also guarantors under our senior secured credit facility. See "Summary—The Transactions," "Description of the Exchange Notes" and "Description of other indebtedness."

Restrictive covenants may adversely affect our operations.

Our senior secured credit facility and the indenture governing the Exchange Notes contain various covenants that limit our ability to, among other things:

- incur additional debt or provide guarantees in respect of obligations of other persons;
- issue redeemable stock and preferred stock;
- pay dividends or distributions or redeem or repurchase capital stock;
- prepay, redeem or repurchase debt;
- make loans, investments and capital expenditures;
- incur liens;
- engage in sale/leaseback transactions;
- restrict distributions from our subsidiaries;
- sell assets and capital stock of our subsidiaries;
- consolidate or merge with or into, or sell substantially all of our assets to, another person; and
- enter into new lines of business.

In addition, the restrictive covenants in our senior secured credit facility require us to maintain specified financial ratios and satisfy other financial condition tests. Our ability to meet those financial ratios and tests can be affected by events beyond our control, and we cannot assure you that we will meet those tests. A breach of any of these covenants could result in a default under our senior secured credit facility. Upon the occurrence of an event of default under our senior secured credit facility, the lenders could elect to declare all amounts then outstanding under our senior secured credit facility to be immediately due and payable and terminate all commitments to extend further credit. If we were unable to repay those amounts, the lenders under our senior secured credit facility could proceed against the collateral granted to them to secure that indebtedness. We have pledged a significant portion of our assets as collateral under our senior secured credit facility. If the lenders under our senior secured credit facility accelerate the repayment of borrowings, we cannot assure you that we will have sufficient assets to repay our senior secured credit facility and our other indebtedness, including the Exchange Notes, or borrow sufficient funds to refinance such indebtedness, if at all. Even if we are able to obtain new financing, it may not be on commercially reasonable terms, or terms that are acceptable to us. See "Description of other indebtedness."

Variable-rate indebtedness subjects us to interest rate risk, which could cause our debt service obligations to increase significantly.

Certain of our borrowings, primarily borrowings under our senior secured credit facility, are, and are expected to continue to be, at variable-rates of interest and expose us to interest rate risk. If interest rates increase, our debt service obligations on the variable-rate indebtedness would increase even though the amount borrowed remained the same, and our net income would consequently decrease. The applicable margin with respect to loans under the revolving credit facility will be a percentage per annum equal to (i) 1.75% for base rate loans and Canadian prime rate loans and (ii) 2.75% for Eurodollar loans and Canadian cost of funds loans. The applicable margin with respect to loans under the term loan facility will be a percentage per annum equal to (i) 1.50% for base rate loans and (ii) 2.50% for Eurodollar loans and will be subject to adjustment based on performance goals. Each quarter point change in interest rates would result in a $250,000 charge in our annual interest expense on our new term loans.

Effective June 30, 2006, we entered into two interest rate swap agreements that expire in 2011, to change a portion of our variable rate debt to fixed rate debt. Pursuant to the swap agreements, the interest rate on notional amounts aggregating $47.4 million at June 30, 2006 is fixed at 5.31 percent. The agreements provide for an increase in the notional amounts to $94.6 million and retention of the 5.31 percent fixed rate at September 30, 2006. The agreements have not been designated as hedges and, accordingly, adjustments required to mark the instruments to their fair value will be recorded as interest expense.

The Exchange Notes and guarantees will not be secured by any of our assets. Our senior secured credit facility is secured and our bank lenders have a prior claim on substantially all our assets.

The Exchange Notes and guarantees will not be secured by any of our assets. However, our senior secured credit facility is secured by a pledge of 100% of our stock and the stock of our existing and future domestic subsidiaries and substantially all our assets and substantially all of the assets of our existing and future domestic subsidiaries. If we become insolvent or are liquidated, or if payment under any of the instruments governing our secured debt is accelerated, the lenders under those instruments will be entitled to exercise the remedies available to a secured lender under applicable law and pursuant to the instruments governing such debt. Accordingly, the lenders under our senior secured credit facility will have a prior claim on our assets securing the debt owed to them. In that event, because the Exchange Notes and guarantees will not be secured by any of our assets, it is possible that our remaining assets might be insufficient to satisfy your claims in full.

As of April 30, 2006, we had approximately $62.4 million of secured indebtedness excluding an additional $6.2 million represented by letters of credit and $41.4 million of availability under the revolving credit facility subject to certain conditions which, if borrowed, would constitute senior secured indebtedness. We are permitted to borrow substantial additional secured indebtedness in the future under the terms of the indenture. See "Summary—The Transactions," "Description of the Exchange Notes—Certain covenants—Limitation on indebtedness" and "Description of the Exchange Notes—Certain covenants—Limitation on liens."

The Exchange Notes will be structurally subordinated to all indebtedness of our existing or future subsidiaries that do not become guarantors of the Exchange Notes.

You will not have any claim as a creditor against our foreign subsidiary that is not guaranteeing the Exchange Notes or against any of our future subsidiaries that do not become guarantors of the Exchange Notes. Indebtedness and other liabilities, including trade payables, whether secured or unsecured, as well as preferred stock of those subsidiaries will be structurally senior to your claims against those subsidiaries.

For the fiscal year ended January 29, 2006, our non-guarantor subsidiary represented approximately 2.0% of our revenues and approximately 4.4% of our operating income. For the 54 day period ended April 30, 2006 (Successor), our non-guarantor subsidiary represented approximately 2.1% of our revenues, approximately 3.5% of our operating income and approximately 2.3% of our EBITDA. For the 37 day period from January 30, 2006 to March 7, 2006 (Predecessor), our non-guarantor subsidiaries represented approximately 1.7% of our net revenues, approximately 2.1% of our operating income and approximately 1.6% of our EBITDA. As of January 29, 2006 and April 29, 2006, our non-guarantor subsidiary represented less than 1.5% of our total assets and had approximately $5.1 million and $5.6 million, respectively, of outstanding total liabilities, including trade payables, all of which would have been structurally senior to the Exchange Notes.

If we default on our obligations to pay our indebtedness we may not be able to make payments on the Exchange Notes.

Any default under the agreements governing our indebtedness, including a default under our senior credit facility that is not waived by the required lenders, and the remedies sought by the holders of such indebtedness, could make us unable to pay principal, premium, if any, and interest on the Exchange Notes and substantially decrease the market value of the Exchange Notes. If we are unable to generate sufficient cash flow and are otherwise unable to obtain funds necessary to meet required payments of principal, premium (if any) and interest on our indebtedness, or if we otherwise fail to comply with the various covenants, including financial and operating covenants, in the instruments governing our indebtedness (including covenants in our indenture and our senior secured credit facility), we could be in default under the terms of the agreements governing such indebtedness, including our senior secured credit facility and our indenture. In the event of such default, the holders of such indebtedness could elect to declare all the funds borrowed thereunder to be due and payable, together with accrued and unpaid interest, the lenders under our senior secured credit facility could elect to terminate their commitments thereunder and cease making further loans and institute foreclosure proceedings against our assets and we could be forced into bankruptcy or liquidation. If our operating performance declines, we may in the future need to obtain waivers from the required lenders under our senior secured credit facility to avoid being in default. If we breach our covenants under our senior secured credit facility and seek a waiver, we may not be able to obtain a waiver from the required lenders. If this occurs, we would be in default under our senior secured credit facility, the lenders could exercise their rights, as described above, and we could be forced into bankruptcy or liquidation. See "Description of other indebtedness" and "Description of the Exchange Notes."

We may not be able to repurchase the Exchange Notes upon a change of control.

Upon the occurrence of a change of control event, as defined in the indenture, subject to certain conditions, we will be required to offer to repurchase all outstanding Exchange Notes at 101% of their principal amount, plus accrued and unpaid interest. The source of funds for that purchase of the Exchange Notes will be our available cash or cash generated from our subsidiaries' operations or other potential sources, including borrowings, sales of assets or sales of equity. We cannot assure you that sufficient funds from such sources will be available at the time of any change of control to make required repurchases of the Exchange Notes tendered. In addition, the terms of our senior secured credit facility will limit our ability to repurchase your Exchange Notes and will provide that certain change of control events will constitute an event of default thereunder. Our future debt agreements may contain similar restrictions and provisions. If the holders of the Exchange Notes exercise their right to require us to repurchase all the Exchange Notes upon a change of control, the financial effect of this repurchase could cause a default under our other debt, even if the change of control itself would not cause a default. Accordingly, it is possible that we will not have sufficient funds at the time of the change of control to make the required repurchase of our other debt and the Exchange Notes or that restrictions in our senior credit facility and the indenture will not allow such repurchases.

In addition, the change of control provisions in the indenture may not protect you from certain important corporate events, such as a leveraged recapitalization (which would increase the level of our indebtedness), reorganization, restructuring, merger or other similar transaction, unless such transaction constitutes a "Change of Control" under the indenture. Such a transaction may not involve a change in voting power or beneficial ownership or, even if it does, may not involve a change that constitutes a "Change of Control" as defined in the indenture that would trigger our obligation to repurchase the Exchange Notes. Therefore, if an event occurs that does not constitute a "Change of Control" as defined in the indenture, we will not be required to make an offer to repurchase the Exchange Notes and you may be required to continue to hold your Exchange Notes despite the event. See "Description of other indebtedness" and "Description of the Exchange Notes—Change of Control."

Federal and state fraudulent transfer laws permit a court to void the Exchange Notes and the guarantees, and, if that occurs, you may not receive any payments on the Exchange Notes.

The issuance of the Exchange Notes and the guarantees may be subject to review under federal and state fraudulent transfer and conveyance statutes. While the relevant laws may vary from state to state, under such laws the payment of consideration will be a fraudulent conveyance if (i) we paid the consideration with the intent of hindering, delaying or defrauding creditors or (ii) we or any of our guarantors, as applicable, received less than reasonably equivalent value or fair consideration in return for issuing either the Exchange Notes or a guarantee and, in the case of (ii) only, one of the following is also true:

- we or any of our guarantors were insolvent or rendered insolvent by reason of the incurrence of the indebtedness;
- payment of the consideration left us or any of our guarantors with an unreasonably small amount of capital to carry on the business; or
- we or any of our guarantors intended to, or believed that we or it would, incur debts beyond our or its ability to pay as they become due.

If a court were to find that the issuance of the Exchange Notes or a guarantee was a fraudulent conveyance, the court could void the payment obligations under the Exchange Notes or such guarantee or subordinate the Exchange Notes or such guarantee to presently existing and future indebtedness of ours or such guarantor, or require the holders of the Exchange Notes to repay any amounts received with respect to the Exchange Notes or such guarantee. In the event of a finding that a fraudulent conveyance occurred, you may not receive any repayment on the Exchange Notes. Further, the voidance of the Exchange Notes could result in an event of default with respect to our other debt and that of our guarantors that could result in acceleration of such debt.

Generally, an entity would be considered insolvent if at the time it incurred indebtedness:

- the sum of its debts, including contingent liabilities, was greater than the fair saleable value of all its assets;
- the present fair saleable value of its assets was less than the amount that would be required to pay its probable liability on its existing debts and liabilities, including contingent liabilities, as they become absolute and mature; or
- it could not pay its debts as they become due.

We cannot be certain as to the standards a court would use to determine whether or not we or the guarantors were solvent at the relevant time, or regardless of the standard that a court uses, that the issuance of the Exchange Notes and the guarantees would not be subordinated to our or any guarantor's other debt.

If the guarantees were legally challenged, any guarantee could also be subject to the claim that, since the guarantee was incurred for our benefit, and only indirectly for the benefit of the guarantor, the obligations of the applicable guarantor were incurred for less than fair consideration. A court could void a guarantor's obligation under its guarantee, subordinate the guarantee to the other indebtedness of a guarantor, direct that holders of the Exchange Notes return any amounts paid under a guarantee to the relevant guarantor or to a fund for the benefit of its creditors, or take other action detrimental to the holders of the Exchange Notes. In addition, the liability of each guarantor under the indenture will be limited to the amount that will result in its guarantee not constituting a fraudulent conveyance or improper corporate distribution, and there can be no assurance as to what standard a court would apply in making a determination as to what would be the maximum liability of each guarantor.

Your ability to transfer the notes may be limited by the absence of an active trading market, and there is no assurance that any active trading market will develop for the notes.

The Exchange Notes are a new issue of securities for which there is no established public market. Therefore, we cannot assure you as to the development or liquidity of any trading market for the Exchange Notes. The liquidity of any market for the Exchange Notes will depend on a number of factors, including:

- the number of holders of Exchange Notes;
- our operating performance and financial condition;
- our ability to complete the offer to exchange the Restricted Notes for the Exchange Notes;
- the market for similar securities;
- the interest of securities dealers in making a market in the Exchange Notes; and
- prevailing interest rates.

Historically, the market for non-investment grade debt has been subject to disruptions that have caused substantial volatility in the prices of securities similar to the Exchange Notes. We cannot assure you that the market, if any, for the Exchange Notes will be free from similar disruptions or that any such disruptions may not adversely affect the prices at which you may sell your Exchange Notes. Therefore, we cannot assure you that you will be able to sell your Exchange Notes at a particular time or that the price you receive when you sell will be favorable.

Holders of Restricted Notes who fail to exchange their Restricted Notes in the exchange offer will continue to be subject to restrictions on transfer.

If you do not exchange your Restricted Notes for the Exchange Notes in the exchange offer, you will continue to be subject to the restrictions on transfer applicable to the Restricted Notes. The restrictions on transfer of your Restricted Notes arise because we issued the Restricted Notes under exemptions from, or in transactions not subject to, the registration requirements of the Securities Act and applicable state securities laws. In general, you may only offer or sell the Restricted Notes if they are registered under the Securities Act and applicable state securities laws, or offered and sold under an exemption from these requirements. We do not plan to register the Restricted Notes under the Securities Act. For further information regarding the consequences of tendering your Restricted Notes in the exchange offer, see the discussions below under the captions "The exchange offer—Consequences of exchanging or failing to exchange Restricted Notes" and "Material United States federal income tax considerations."

You must comply with the exchange offer procedures in order to receive new, freely tradable Exchange Notes.

Delivery of the Exchange Notes in exchange for Restricted Notes tendered and accepted for exchange pursuant to the exchange offer will be made in accordance with the procedures described in this prospectus. We are not required to notify you of defects or irregularities in tenders of Restricted Notes for exchange. Restricted Notes that are not tendered or that are tendered but we do not accept for exchange will, following consummation of the exchange offer, continue to be subject to the existing transfer restrictions under the Securities Act and, upon consummation of the exchange offer, certain registration and other rights under the registration rights agreements will terminate. See "The exchange offer—Procedures for tendering Restricted Notes" and "The exchange offer—Consequences of exchanging or failing to exchange Restricted Notes."

Some holders who exchange their Restricted Notes may be deemed to be underwriters, and these holders will be required to comply with the registration and prospectus delivery requirements in connection with any resale transaction.

If you exchange your Restricted Notes in the exchange offer for the purpose of participating in a distribution of the Exchange Notes, you may be deemed to have received restricted securities and, if so, will be required to comply with the registration and prospectus delivery requirements of the Securities Act in connection with any resale transaction.

USE OF PROCEEDS

We will not receive any proceeds from the exchange offer. Any Restricted Notes that are properly tendered and exchanged pursuant to the exchange offer will be retired and cancelled.

RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth our ratio of earnings to fixed charges on a historical basis for each of the last five fiscal years ended January 29, 2006, for the thirteen weeks ended May 1, 2005 (Predecessor) and for the 54 day period ended April 30, 2006 (Successor) and the 37 day period ended March 7, 2006 (Predecessor).

	Fiscal year ended					Thirteen weeks ended May 1, 2005	37 Day Period from January 30, 2006 to March 7, 2006	54 Day Period from March 8, 2006 to April 30, 2006(1)
	February 3, 2002	February 2, 2003	February 1, 2004	January 30, 2005	January 29, 2006			
			Predecessor				Predecessor	Successor
Ratio of Earnings to Fixed Charges	1.72x	1.48x	2.11x	2.29x	1.32x	2.49x	1.46x	—

(1) Earnings for the 54 day period ended April 30, 2006 (Successor) were insufficient to cover the fixed charges by $3,283.

UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL INFORMATION

The following unaudited pro forma consolidated financial information has been derived by the application of pro forma adjustments related to the Transactions to our historical consolidated financial statements included elsewhere in this prospectus. The unaudited pro forma consolidated statements of operations for the year ended January 29, 2006 and for the thirteen week period ended April 30, 2006 give effect to the Transactions as if they had occurred as of January 31, 2005. The pro forma adjustments are based upon available information, preliminary estimates and certain assumptions that we believe are reasonable based on information currently available, and are described in the accompanying notes. The pro forma consolidated statements of operations should not be considered indicative of actual results that would have been achieved had the Transactions been consummated on the dates indicated and do not purport to indicate results of operations as of any future date or for any future period. The unaudited pro forma consolidated financial information should be read in conjunction with "Summary—The Transactions," "Use of proceeds," "Management's discussion and analysis of financial condition and results of operations" and our historical consolidated financial statements and the notes thereto included elsewhere in this prospectus.

The Merger has been accounted for as a purchase in conformity with Statement of Financial Accounting Standards No. 141, "Business Combinations." In connection with the preliminary purchase price allocation, we have made estimates of the fair values of our assets and liabilities based upon assumptions that we believe are reasonable, and in some cases, preliminary valuation results from independent valuation specialists. As of April 30, 2006, we have recorded preliminary purchase accounting adjustments to the carrying value of our property and equipment, to establish intangible assets for goodwill, our tradenames and trademarks and to revalue our deferred lease liability, among other things. This allocation of the purchase price is preliminary and subject to finalization of the independent valuation and our analysis, of the fair value of the assets acquired and liabilities assumed as of the date of the Merger. The final allocation of the purchase price may result in additional adjustments to the recorded amounts of our assets and liabilities and may also result in adjustments to depreciation and amortization expense, rent expense and the provision for income taxes. The adjustments, if any, arising out of the finalization of the purchase allocation will not impact our cash flows including cash interest and rent. However, such adjustments could result in material increases or decreases to operating income and net income. Further revisions to the purchase price allocation will be made as additional information becomes available.

Unaudited pro forma consolidated statement of operations
for the year ended January 29, 2006

	Historical	Pro forma adjustments(a)	Pro forma
		(In thousands)	
Food and beverage revenues	$ 253,996	$ —	$ 253,996
Amusements and other revenues	209,456	—	209,456
Total revenues	463,452	—	463,452
Total cost of products	87,293	—	87,293
Operating payroll and benefits	132,384	—	132,384
Other store operating expenses	151,677	1,925 (b)	153,602
General and administrative expenses	31,158	3,801 (c)	34,959
Depreciation and amortization expense	42,616	4,596 (d)	47,212
Startup costs	5,325	—	5,325
Total operating costs	450,453	10,322	460,775
Operating income	12,999	(10,322)	2,677
Interest expense, net	6,695	22,308 (e)	29,003
Income (loss) before provision for income taxes	6,304	(32,630)	(26,326)
Provision (benefit) for income taxes	2,016	(12,017)(g)	(10,001)
Net income (loss)	$ 4,288	$ (20,613)	$ (16,325)

Unaudited pro forma consolidated statement of operations
for the thirteen weeks ended April 30, 2006

	For the 54 Day Period from March 8, 2006 to April 30, 2006	For the 37 day period from January 30, 2006 to March 7, 2006	Pro forma adjustments(a)	Pro forma
		(In thousands)		
Food and beverage revenues	$ 41,502	$ 27,562	$ —	$ 69,064
Amusements and other revenues	34,932	22,847	—	57,779
Total revenues	76,434	50,409	—	126,843
Cost of products	15,414	10,294	—	25,708
Operating payroll and benefits	22,028	14,293	—	36,321
Other store operating expenses	23,573	15,577	211 (b)	39,361
General and administrative expenses	5,272	3,480	—	8,752
Depreciation and amortization expense	6,741	4,328	243 (d)	11,312
Startup costs	1,406	880	87 (b)	2,373
Total operating costs	74,434	48,852	541	123,827
Operating income	2,000	1,557	(541)	3,016
Interest expense, net	5,244	649	1,368 (f)	7,261
Income (loss) before provision for income taxes	(3,244)	908	(1,909)	(4,245)
Provision (benefit) for income taxes	(1,216)	422	(850)(g)	(1,644)
Net income (loss)	$ (2,028)	$ 486	$ (1,059)	$ (2,601)

Notes to unaudited pro forma consolidated statements of operations
(dollars in thousands)

(a) The Merger has been accounted for as a purchase in conformity with Statement of Financial Accounting Standards No. 141, "Business Combinations."

(b) Represents the change in rent expense to reflect the adjustment of operating leases to fair value following the Merger.

(c) Reflects additional costs associated with incentive compensation arrangements with certain executives related to change in control events, the pro rata portion of estimated annual payments to WS Midway Holdings, Inc. under the terms of an expense reimbursement agreement and additional administrative expenses associated with the Merger.

(d) Represents the difference in depreciation and amortization expense during the pro forma periods related to the amortization of smallwares inventory to conform to the accounting policy we adopted following the Merger, amortization of certain trademarks recorded in connection with the Merger and change in depreciation expense related to the fair values of assets acquired.

(e) Represents the difference in interest expense during the pro forma period for the fiscal year ended January 29, 2006 related to our new senior credit facility, including the delayed drawdown of $50,000 related to the payments to dissenters, the $175,000 Restricted Notes and a bridge funding fee incurred in connection with the Merger.

(f) Represents the difference in interest expense during the pro forma period for the thirteen week period ended April 30, 2006 related to our new senior credit facility, including the delayed drawdown of $50,000 related to the payments to dissenters and the $175,000 Restricted Notes.

(g) Represents the estimated tax effect of pro forma adjustments (b) through (f) at the applicable statutory tax rates.

SELECTED HISTORICAL CONSOLIDATED FINANCIAL AND OTHER DATA

Accounting principles generally accepted in the United States require operating results for Dave & Buster's prior to the Merger completed March 8, 2006 to be presented as the Predecessor's results in the historical financial statements. Operating results subsequent to the Merger for Dave & Buster's are presented as the Successor's results in the historical financial statements and include 54 days from March 8, 2006 to April 30, 2006. The following table sets forth our selected historical consolidated statement of operations data for each of the five fiscal years in the period ended January 29, 2006, the thirteen-week period ended May 1, 2005, and the 37 day period ended March 7, 2006 of the Predecessor and the 54 day period ended April 30, 2006 of the Successor. The statement of operations data for each of the three fiscal years in the period ended January 29, 2006 (Predecessor) and the balance sheet data as of January 29, 2006 and January 30, 2005 (Predecessor) were derived from our audited consolidated financial statements included elsewhere in this prospectus. The statement of operations data and the balance sheet data as of and for the thirteen weeks ended May 1, 2005, and the 37 day period ended March 7, 2006 of the Predecessor and the 54 day period ended April 30, 2006 of the Successor, were derived from our unaudited consolidated financial statements included elsewhere in this prospectus and, in the opinion of management, include all normal recurring adjustments necessary to present fairly the data for such periods and as of such dates. Operating results for the periods ended March 7, 2006 (Predecessor) and April 30, 2006 Successor are not necessarily indicative of the results that may be expected for fiscal 2006.

This table should be read in conjunction with "Management's discussion and analysis of financial condition and results of operations" and the financial statements and related notes included elsewhere in this prospectus. This historical consolidated financial data is not indicative of our future financial position or operating results.

	Fiscal year ended					Thirteen weeks ended May 1, 2005	37 Day Period from January 30, 2006 to March 7, 2006	54 Day Period from March 8, 2006 to April 30, 2006
	February 3, 2002(1)	February 2, 2003(1)	February 1, 2004(1)	January 30, 2005(4)	January 29, 2006			
	(Predecessor)	(Predecessor)	(Predecessor)	(Predecessor)	(Predecessor)	(Predecessor)	(Predecessor)	(Successor)
	(Dollars in thousands)							
Statement of operations data:								
Food and beverage revenues	$ 181,358	$ 192,882	$ 191,881	$ 209,689	$ 253,996	$ 61,392	$ 27,562	$ 41,502
Amusement and other revenues	176,651	180,870	170,941	180,578	209,456	54,343	22,847	34,932
Total revenues	358,009	373,752	362,822	390,267	463,452	115,735	50,409	76,434
Operating expenses:								
Cost of products:								
Cost of food and beverage	44,904	46,220	46,354	51,367	61,818	16,028	7,111	10,755
Cost of amusement and other	22,035	22,532	21,788	21,704	25,475	6,477	3,183	4,659
Total cost of products	66,939	68,752	68,142	73,071	87,293	22,505	10,294	15,414
Operating payroll and benefits	110,478	114,904	105,027	110,542	132,384	32,775	14,293	22,028
Other store operating expenses	104,757	114,957	108,413	119,509	151,677	33,988	15,577	23,573
General and administrative expenses	20,653	25,640	25,033	26,221	31,158	7,692	3,480	5,272
Depreciation and amortization expense(5)	31,426	33,156	32,741	34,238	42,616	9,741	4,328	6,741
Startup costs	4,578	1,520	—	1,295	5,325	78	880	1,406
Total operating costs	338,831	358,929	339,356	364,876	450,453	106,779	48,852	74,434
Operating income	19,178	14,823	23,466	25,391	12,999	8,956	1,557	2,000
Interest expense, net	7,820	7,143	6,926	5,586	6,695	1,773	649	5,244
Income (loss) before provision for income taxes and cumulative effect of a change in accounting principles	11,358	7,680	16,540	19,805	6,304	7,183	908	(3,244)
Provision (benefit) for income taxes	4,099	2,592	5,619	6,925	2,016	2,622	422	(1,216)
Income (loss) before cumulative effect of a change in accounting principle	7,259	5,088	10,921	12,880	4,288	4,561	486	(2,028)
Cumulative effect of a change in accounting principle(2)	—	(7,096)	—	—	—	—	—	—
Net income (loss)	$ 7,259	$ (2,008)	$ 10,921	$ 12,880	$ 4,288	$ 4,561	$ 486	$ (2,028)
Statement of cash flow data:								
Cash provided by (used in):								
Operating activities	$ 61,233	$ 41,840	$ 43,670	$ 49,064	$ 65,423	$ 13,369	$ 10,741	$ 5,189
Investing activities	(42,345)	(22,206)	(27,421)	(81,772)	(63,271)	(10,849)	(10,600)	(280,589)
Financing activities	(17,546)	(21,625)	(16,729)	37,160	(5,957)	(4,967)	89	282,911

Balance sheet data (as of end of period):								
Cash and cash equivalents	$ 4,521	$ 2,530	$ 6,935	$ 11,387	$ 7,582	$ 5,177	$	15,323
Working capital (deficit)	(4,478)	(4,231)	(220)	(7,656)	(37,206)	(5,324)		(13,977)
Property and equipment, net	307,484	296,770	291,473	331,478	374,616	332,111		345,185
Total assets	358,316	338,531	340,201	401,171	423,062	397,471		542,894
Total debt	90,396	67,794	53,534	88,143	80,175	82,854		289,147
Stockholders' equity	167,390	166,585	179,784	196,945	205,220	202,204		106,221
Other data:								
Capital expenditures	$ 61,293	$ 22,956	$ 24,292	$ 34,234	$ 62,066	$ 10,866	$ 10,600	$ 5,955
Number of complexes at end of period	31	32	33	43	46	43	46	47
Ratio of earnings to fixed charges(3)	1.72x	1.48x	2.11x	2.29x	1.32x	2.49x	1.46x	—

(1) As more fully described in "Management's discussion and analysis of financial condition and results of operations," we have restated our previously issued financial statements for these periods due to certain lease accounting issues.

(2) "Cumulative effect of a change in accounting principle" reflects the adoption of Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets" ("SFAS 142"). On February 4, 2002 we adopted SFAS 142, which requires annual impairment analyses of intangible assets. In connection with the adoption of this standard, an impairment analysis was performed resulting in the write-off of goodwill expense of $7,096.

(3) For purposes of computing the ratio of earnings to fixed charges, earnings consist of income before income taxes and the cumulative effect of a change in accounting principle plus fixed charges. Fixed charges consist of net interest expense (including capitalized interest), the amortization of deferred debt issuance costs, and the interest component of operating rents (calculated as one-third of total rent expense, which in our opinion, is a reasonable approximation of the interest factor). Earnings for the 54 day period ended April 30, 2006 (Successor) were insufficient to cover the fixed charges by $3,283.

(4) On November 1, 2004, we completed the acquisition of nine Jillian's locations, pursuant to an asset purchase agreement, for cash and the assumption of certain liabilities. The results of the acquired complexes are included in our consolidated results beginning on the date of acquisition.

(5) On August 28, 2005, a subsidiary of ours closed the acquired Jillian's complex located at the Mall of America in Bloomington, Minnesota due to continuing operating losses attributable to this complex and unsuccessful efforts to renegotiate the terms of the related leases. As a result of the closing, we recorded pre-tax charges of approximately $3,000 in fiscal 2005. Additional depreciation, amortization and impairment of the assets which were abandoned and whose carrying value was not recoverable represented approximately $2,500 of the charge and is included in depreciation and amortization expense, we also incurred expenses of approximately $500 related to severance and other costs required to close the complex.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations contains forward-looking statements. Our actual results may differ materially from those suggested by our forward-looking statements for various reasons, including those discussed in the "Risk factors" and "Forward-looking statements" sections of this prospectus. We do not have any intention or obligation to update forward-looking statements included in this prospectus.

General

Our fiscal year ends on the Sunday after the Saturday closest to January 31. References to Fiscal 2005, 2004 and 2003 are to the 52 weeks ended January 29, 2006, January 30, 2005, and February 1, 2004, respectively. All references to the first quarter of 2006 relate to the combined 54 day period ended April 30, 2006 of the Successor and the 37 day period ended March 7, 2006 of the Predecessor. All references to the first quarter of 2005 relate to the thirteen week period ended May 1, 2005. All dollar amounts are presented in thousands, unless otherwise noted, except share and per share amounts.

Merger with WS Midway Acquisition Sub, Inc.

Dave & Buster's was acquired on March 8, 2006, by WS Midway Holdings, Inc., a newly-formed Delaware corporation, through the merger (the "Merger") of WS Midway Acquisition Sub, Inc., a newly-formed Missouri corporation and a direct, wholly-owned subsidiary of WS Midway Holdings, Inc., with and into Dave & Buster's with Dave & Buster's as the surviving corporation. Affiliates of Wellspring Capital Management LLC ("Wellspring") and HBK Investments L.P. ("HBK") control approximately 82% and 18%, respectively, of the outstanding capital stock of WS Midway Holdings, Inc. Although we continue as the same legal entity after the Merger, the accompanying condensed consolidated statements of operations, stockholders equity and cash flows present our results of operations and cash flows for the periods preceding the Merger ("Predecessor") and the period succeeding the Merger ("Successor"), respectively.

At the effective time of the Merger discussed above, the following events occurred:

1. All outstanding shares of Dave & Buster's common stock (including those issued upon the conversion of our convertible subordinated notes), other than shares held by WS Midway Holdings, Inc. or held by stockholders who perfected their appraisal rights under Missouri law, were converted into the right to receive $18.05 per share without interest, less any applicable withholding taxes;

2. All outstanding options or warrants to acquire our common stock were converted into the right to receive an amount in cash equal to the difference between the per share exercise price and $18.05, without interest, less any applicable withholding taxes; and

3. To the extent not converted into shares of our common stock, we redeemed for cash our convertible subordinated notes due 2008 and the indenture governing the convertible notes ceased to have any effect.

The Merger resulted in a change of ownership of 100 percent of the Company's outstanding common stock and is being accounted for in accordance with Statement of Financial Accounting Standards ("SFAS") 141, "Business Combinations". The purchase price paid in the Merger has been "pushed down" to the Company's financial statements and is allocated to record the acquired assets and liabilities assumed based on their fair value. The Merger and the allocation of the purchase price have been recorded as of March 8, 2006 based on preliminary valuation studies. The allocation of the purchase price is subject to change based on completion of such studies, the resolution of matters

related to dissenting shareholders referred to below and the resolution of certain personnel matters. The purchase price was approximately $389,412, of which approximately $337,679 has been paid as of July 24, 2006. The sources and uses of funds in connection with the Merger are summarized below:

Sources		
Revolving credit facility	$	4,376
Senior secured credit facility		50,000
Senior notes		175,000
Other liabilities—dissenting shareholders		51,733
Equity contribution		108,100
Cash on hand		203
Total sources	$	389,412
Uses		
Consideration paid to stockholders	$	213,102
Consideration paid to convertible note and warrant holders		44,390
Consideration paid to option holders		9,279
Consideration payable to dissenting shareholders		51,733
Payment of existing debt		51,137
Transaction costs		19,771
Total uses	$	389,412

Holders of up to approximately 2.6 million shares notified us of their intent to exercise dissenters' rights and initiate proceedings under Section 351.455 of the General and Business Corporation Law of Missouri to demand fair value with respect to their shares. On July 10, 2006, the Company and all dissenting shareholders reached an agreement which provides, among other things, for the permanent and irrevocable settlement of all claims among the parties. The settlement agreement requires the Company to pay approximately $51,733 to the shareholders on or before August 15, 2006. Payments of the settlement will be funded from borrowings under our senior secured credit facility. Accordingly, we have recorded a long term liability of $51,733 related to our obligation under the settlement agreement.

Restatement of previously issued financial statements

On February 7, 2005, the Chief Accountant of the SEC issued a letter to the American Institute of Certified Public Accountants, which clarified existing generally accepted accounting principles applicable to leases. We have reviewed the principles covered in the letter with our Audit Committee, specifically the accounting for construction allowances and rent holiday. As a result, we and our Audit Committee determined that our previously issued financial statements should be restated.

Prior to November 1, 2004, we recognized straight line rent expense for leases beginning on the opening date of our complexes and other facilities. This had the effect of excluding the construction period of these facilities from the calculation of the period over which rent is calculated. We now include the construction period in the calculations of straight-line rent. Rent incurred during the construction period is capitalized as a component of the cost of the facilities and is amortized over a period equal to the lesser of the initial non-cancelable lease term plus any periods covered by renewal options that we consider reasonably assured of exercising, or the useful life of the related assets. Rent incurred during the startup period is included in startup costs.

Additionally, we have changed our classification of construction allowances in our consolidated balance sheets to include the allowances as a component of deferred lease liabilities, which are being amortized as a reduction to rent expense over the terms of the respective leases. Prior to November 1, 2004, construction allowances were recorded as a reduction of property and equipment and the related

amortization was classified as a reduction in depreciation and amortization expense. Furthermore, construction allowances are now presented as a component of cash flows from operating activities in the consolidated statements of cash flows. Prior to November 1, 2004 our consolidated statements of cash flows reflected construction allowances as a reduction of capital expenditures within investing activities.

The cumulative effect of the restatement adjustments through our February 1, 2004 balance sheet was to increase property and equipment, net and deferred lease liabilities, by approximately $44,312 and $49,327, respectively, and to reduce deferred tax liabilities and stockholders' equity by approximately $1,931 and $3,105, respectively. Adjustments to rent expense and depreciation expense, net of the related tax effects, resulted in aggregate decreases in net income of $68,000 and $260,000 for the fiscal years ended February 1, 2004 and February 2, 2003, respectively.

The financial statements included in this prospectus reflect the impact of these restatements. The management's discussion and analysis below gives effect to these restatements.

Acquisitions and disposals

On November 1, 2004, we completed the acquisition of nine Jillian's locations, pursuant to an asset purchase agreement, for cash and the assumption of certain liabilities. The cash requirements of the acquisition were funded from our existing credit facility. The results of the acquired complexes are included in our consolidated results beginning on the date of acquisition.

On August 28, 2005, a subsidiary of ours closed the acquired Jillian's complex located at the Mall of America in Bloomington, Minnesota due to continuing operating losses attributable to this complex and our unsuccessful efforts to renegotiate the terms of the related leases. As a result of the closing, we recorded total pre-tax charges of approximately $3,000 in the initial thirty-nine weeks of fiscal 2005. The charges included $2,500 of second quarter expenses for additional depreciation, amortization and impairment of the assets that were abandoned and whose carrying value was not recoverable as of July 31, 2005. This portion of the charge is included in depreciation and amortization expense in the accompanying consolidated statements of operations. Additionally, $500 of the charges was recorded during the third quarter and related to severance and other costs required to complete the closure of the complex (approximately $400 in operating payroll and benefits and approximately $100 in other store operating expenses).

In order to address lower than anticipated levels of post-acquisition revenues and operating results from our acquired Jillian's stores, we are converting several of our Jillian's locations to our new "Dave & Buster's Grand Sports Café" brand. We believe this conversion will enhance and accelerate our efforts to improve the results of operations of these stores from those achieved since completion of the Jillian's acquisition. We began converting the stores in September 2005, and have converted five of the stores in fiscal 2005. We converted one additional store in the first quarter of 2006. We will continue to evaluate the performance of the converted stores in order to determine if conversion of the remaining units is appropriate.

In October 2005, we acquired the general partner interest in a limited partnership which owns a Jillian's complex in the Discover Mills Mall near Atlanta, Georgia for a total cost of approximately $1,169. The limited partner currently earns a preferred return on its remaining invested capital. We currently have a 50.1 percent interest in the income or losses of the partnership. After deducting the preferred return to the limited partner, our interest in the income or losses of the partnership is not expected to be significant to our results of operations until the limited partner receives a full return of its invested capital and preferred return. We also manage the complex under a management agreement for which we receive a fee of 4.0 percent of operating revenues annually. We account for our general partner interest using the equity method due to the substantive participative rights of the limited partner in the operations of the partnership.

See note 3 to the consolidated financial statements for the fiscal year ended January 29, 2006 included elsewhere in this prospectus for additional information on these acquisitions.

Overview

We monitor and analyze a number of key performance measures and indicators in order to manage our business and evaluate our financial and operating performance. Those indicators include:

Revenues. We derive revenues primarily from food and beverage and amusement sales. For the fiscal year ended January 29, 2006, we derived 35.7 percent of our total revenue from food sales, 19.1 percent from beverage sales, 43.0 percent from amusement sales and 2.2 percent from other sources. For the thirteen weeks ended April 30, 2006, we derived 35.5 percent of our total revenue from food sales, 19.0 percent from beverage sales, 43.7 percent from amusement sales and 1.8 percent from other sources. We continually monitor the success of current food and beverage items, the availability of new menu offerings, our menu price structure and our ability to adjust prices where competitively appropriate. In the beverage component, we operate fully licensed facilities, which means that we have full beverage service throughout the complex. Our complexes also offer an extensive array of amusements, including state-of-the-art simulators, high-tech video games, traditional pocket billiards and shuffleboard, as well as a variety of redemption games, which dispense coupons that can be redeemed for prizes in our Winner's Circle. Our redemption games include basic games of skill, such as skee-ball and basketball, and the prizes in our Winner's Circle range from small-ticket novelty items to high-end electronics, such as flatscreen televisions. We review the game play on existing amusements in an effort to match amusements availability with guest preferences. We will continue to invest in new games as they become available and prove to be attractive to our guests. We invested approximately $8,900 in new games during 2005. We currently anticipate spending approximately $8,100 on new games during the full fiscal year of 2006.

We believe that special events business is a very important component of our revenue, because a significant percentage of the guests attending a special event are in a Dave & Buster's for the first time. This is a very advantageous way to introduce the concept to new guests. Accordingly, we place considerable emphasis on this area through our in-store sales teams.

Cost of products. Cost of products includes the cost of food, beverages and Winner's Circle amusement items. During the fiscal year ended January 29, 2006, our cost of food products averaged 25.4 percent of food revenue and our cost of beverage products averaged 22.4 percent of beverage revenue. During the thirteen weeks ended April 30, 2006, our cost of food products averaged 26.1 percent of food revenue and our cost of beverage products averaged 25.5 percent of beverage revenue. Our amusement cost of products averaged 11.0 percent and 12.2 percent of amusement revenues for the fiscal year 2005 and for the thirteen weeks ended April 30, 2006, respectively. Our cost of products is driven by product mix and pricing movements from third party suppliers. In 2004, we began purchasing a number of our amusement items direct from Asia, which contributed to lower amusement cost of products. We continually strive to gain efficiencies in both the acquisition and use of products while maintaining high standards of product quality.

Operating payroll and benefits. Operating payroll and benefits consist of wages, employer taxes and benefits for our store personnel. We continually review the opportunity for efficiencies principally through scheduling refinements.

Other store operating expenses. Other store operating expenses consist of store-related occupancy, restaurant expenses, utilities, repair and maintenance and marketing costs.

Liquidity and cash flows. Our primary source of cash flow is from operating activities and availability under our revolving credit facility.

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. We also expect seasonality to be a factor in the operation or results of our business in the future with anticipated lower third quarter revenues and higher fourth quarter revenues associated with the year-end holidays. We also expect that increasing energy costs will continue to exert pressure on both supplier pricing and consumer spending related to entertainment and dining alternatives. The effects of any supplier price increases are expected to be partially offset by selected menu price increases where competitively appropriate. However, there is no assurance that the cost of our product will remain stable or that the federal or state minimum wage rate will not increase. We expect that our historically higher revenues during the fourth quarter due to the winter holiday season will continue to make our financial results susceptible to the impact of severe weather on customer traffic and sales during that period.

Results of operations

The following table sets forth selected data, in thousands of dollars and as a percentage of total revenues (unless otherwise noted) for the periods indicated. All information is derived from the consolidated statements of operations included in this prospectus.

	54 Day period from March 8, 2006 to April 30, 2006		37 Day period from January 30, 2006 to March 7, 2006		Thirteen weeks ended April 30, 2006		Thirteen weeks ended May 1, 2005	
	(Successor)		(Predecessor)		(Combined)		(Predecessor)	
Food and beverage revenues	$ 41,502	54.3%	$ 27,562	54.7%	$ 69,064	54.4%	$ 61,392	53.0%
Amusement and other revenues	34,932	45.7%	22,847	45.3%	57,779	45.6%	54,343	47.0%
Total revenues	76,434	100.0%	50,409	100.0%	126,843	100.0%	115,735	100.0%
Cost of food and beverage (as a percentage of food and beverage revenues)	10,755	25.9%	7,111	25.8%	17,866	25.9%	16,028	26.1%
Cost of amusement and other (as a percentage of amusement and other revenues)	4,659	13.3%	3,183	13.9%	7,842	13.6%	6,477	11.9%
Total cost of products	15,414	20.2%	10,294	20.4%	25,708	20.3%	22,505	19.4%
Operating payroll and benefits	22,028	28.8%	14,293	28.4%	36,321	28.6%	32,775	28.3%
Other store operating expenses	23,573	30.9%	15,577	30.9%	39,150	30.9%	33,988	29.5%
General and administrative expenses	5,272	6.9%	3,480	6.9%	8,752	6.9%	7,692	6.6%
Depreciation and amortization expense	6,741	8.8%	4,328	8.6%	11,069	8.7%	9,741	8.4%
Startup costs	1,406	1.8%	880	1.7%	2,286	1.8%	78	0.1%
Total operating costs	74,434	97.4%	48,852	96.9%	123,286	97.2%	106,779	92.3%
Operating income	2,000	2.6%	1,557	3.1%	3,557	2.8%	8,956	7.7%
Interest expense, net	5,244	6.8%	649	1.3%	5,893	4.6%	1,773	1.5%
Income (loss)) before provisions for income taxes	(3,244)	(4.2)%	908	1.8%	(2,336)	(1.8)%	7,183	6.2%
Provision (benefit) for income taxes	(1,216)	(1.5)%	422	0.8%	(794)	(0.6)%	2,622	2.3%
Net income (loss)	$ (2,028)	(2.7)%	$ 486	1.0%	$ (1,542)	(1.2)%	$ 4,561	3.9%
Cash provided by (used in):								
Operating activities	$ 5,189		$ 10,741		$ 15,930		$ 13,369	
Investing activities	(280,589)		(10,600)		(291,189)		(10,849)	
Financing activities	282,911		89		283,000		(4,967)	
Change in comparable store sales(1)						6.1%		(1.7)%
Stores open at end of period(2)		47		46		47		43
Comparable stores open at end of period		33		33		33		33
Effective tax rate						34.0%		36.5%

(1) "Comparable store sales" (year-over-year comparison of complexes open at least 18 months as of the beginning of each of our fiscal years) is a key performance indicator used within our industry and are indicative of acceptance of our initiatives as well as local economic and consumer trends.

(2) The number of stores open at April 30, 2006 includes the opening of a complex in New York Times Square on April 5, 2006, the openings of complexes in Omaha, Buffalo and Kansas City in the second, third and fourth quarters of 2005, respectively.

Thirteen Weeks ended April 30, 2006 compared to May 1, 2005

Revenues

Total revenues increased 9.6 percent, or $11,108, for first quarter 2006 compared to first quarter 2005.

Our revenue mix was 54.4 percent for food and beverage and 45.6 percent for amusements and other. This compares to 53.0 percent and 47.0 percent, respectively, for the comparable period in 2005. The shift in our revenue mix was influenced by the success of two promotional efforts launched in the second quarter of 2005, our "Power Combo" promotion and our "Super Charge" promotion. The "Power Combo" promotion provides our guests with a value offering that includes selected entrees and a game card at a fixed price. Our "Super Charge" promotion allows guests to increase purchased game play on certain Power Cards by twenty-five percent for a discounted amount.

Revenues at our comparable stores increased 6.1 percent for first quarter 2006 over the same period for 2005. Food sales at our comparable stores increased by 11.0 percent over sales levels achieved in the same period of 2005. This increase in food sales was accomplished in part by the continued success of our "Power Combo" promotion. Our "Power Combo" promotion was bolstered by six weeks of advertising on cable television in all of our markets. No similar marketing efforts were deployed in the first quarter of 2005. Beverage sales at our comparable stores increased by 6.9 percent over first quarter 2005 as we experienced continued positive results of our "Late Night Happy Hour" and other promotional activity around the beverage component of our business. Comparable store amusements revenue in the first quarter of 2006 increased by 1.9 percent versus the same period of 2005.

Comparable special events revenues accounted for 12.8 percent of consolidated revenue for the first quarter of 2006, down from 13.8 percent in the comparable 2005 period.

Cost of products

Cost of food and beverage products declined 20 basis points to 25.9 percent of revenue for the first quarter of 2006 compared to 26.1 percent for the first quarter of 2005. For our comparable Dave & Buster's locations, food and beverage costs as a percentage of revenue decreased 10 basis points to 25.8 percent.

The costs of amusements, as a percentage of amusements revenue, increased 170 basis points as a result of the revenue mix changes described above.

Operating payroll and benefits

Operating payroll and benefits increased 30 basis points to 28.6 percent of revenue for the first quarter of 2006, compared to 28.3 percent for the first quarter of 2005. This increase was primarily driven by additional training costs and incentive compensation costs.

Other store operating expenses

Other store operating expenses increased 140 basis points to 30.9 percent for the first quarter of 2006, compared to 29.5 percent for the same period of 2005. This increase was primarily driven by increase in marketing costs due to the six weeks of advertising on cable television venues in all of our markets, offset by decreases in other operating expenses. No similar marketing efforts were deployed in the first quarter of 2005. We anticipate spending approximately $19,000 in our marketing efforts for fiscal year 2006 compared to approximately $16,000 in fiscal 2005.

General and administrative expenses

General and administrative expenses consist primarily of personnel, facilities and professional expenses for the various departments of corporate headquarters. General and administrative expenses increased 30 basis points for the first quarter of 2006 compared to the first quarter of 2005. Reductions in costs incurred for legal and audit services were offset by expenses associated with the Merger transactions and accruals for estimated incentive compensation programs.

Depreciation and amortization expense

Depreciation and amortization expense increased $1,328 primarily due to new store openings and the conversion of several of our Jillian's locations to the Dave & Buster's Grand Sports Cafe brand in 2005.

Startup costs

Startup costs include costs associated with the opening and organizing of new complexes or conversion of existing complexes, including the cost of feasibility studies, staff-training and recruiting and travel costs for employees engaged in such startup activities. All startup costs are expensed as incurred. The increase in startup costs as a percentage of revenues is primarily attributed to the opening of our Times Square location in the first quarter of 2006 compared to the opening of our Omaha location in the second quarter of 2005. Startup costs were also impacted in the first quarter of 2006 due to the conversion of one of our Jillian's locations to the Dave & Buster's Grand Sports Café brand. We began converting the Jillian's stores in September 2005 and converted five of the stores in the third and fourth quarters of 2005.

Interest expense

The increase in interest expense is attributed to borrowings of $62,414 under our new senior secured credit facility and the private placement of $175,000 aggregate principal amount of senior notes that were obtained in connection with the Merger.

Provision for income taxes

Our effective tax rate differs from the statutory rate primarily due to the deduction for FICA tip credits and state income taxes.

Fiscal 2005 compared to fiscal 2004

Revenues

Total revenues increased 18.8 percent, or $73,185, for fiscal 2005 compared to fiscal 2004. The revenue increase was generated from the following components of our operations:

Acquired Jillian's branded stores	12.5%
Dave & Buster's branded stores opened in fiscal 2004 and 2005	4.6%
Comparable Dave & Buster's branded stores	1.5%
Other	0.2%
Total increase	18.8%

Our revenue mix was 54.8 percent for food and beverage and 45.2 percent for amusements and other. This compares to 53.7 percent and 46.3 percent, respectively, for the comparable period in 2004. The shift in our revenue mix was influenced by the success of our "Power Combo" promotion and our "Super Charge" promotion at our Dave & Buster's stores, partially offset by the operations of our

Jillian's branded stores which traditionally have a larger percentage of revenue attributable to amusements.

Revenues at our comparable stores increased 1.5 percent for fiscal` 2005 compared to the same period for 2004. Food sales at our comparable stores increased by 5.7 percent over sales levels achieved in the same period of 2004. This increase in food sales was accomplished primarily by the success of our "Power Combo" promotion. Beverage sales at our comparable stores increased by 4.3 percent over fiscal 2004 as we experienced continued success of our "Late Night Happy Hour" and other promotional activity around the beverage component of our business. Comparable store amusements revenue in fiscal 2005 declined by 2.6 percent versus the same period of 2004, due in part to the discounted game play resulting from our promotional activities.

Comparable special events revenues accounted for 16.4 percent of consolidated revenue for fiscal 2005, up from 16.1 percent in the comparable 2004 period.

Cost of products

Cost of food and beverage products decreased 20 basis points to 24.3 percent of revenue for fiscal 2005, compared to 24.5 percent for fiscal 2004. For our comparable Dave & Buster's locations, food and beverage costs as a percentage of revenue decreased 50 basis points to 24.3 percent and food and beverage cost as a percentage of revenue. These decreased costs were offset by higher food and beverage costs at our Jillian's locations, which were 26.4 percent of revenue. Higher food and beverage costs at our Jillian's locations were due in part to costs associated with the implementation of new menu items.

The costs of amusements, as a percentage of amusements revenue, remained flat compared to 2004. Margin improvements achieved by purchasing amusement redemption items directly from Asia were offset by the impact of the revenue mix changes described above.

Operating payroll and benefits

Operating payroll and benefits increased 30 basis points to 28.6 percent of revenue for fiscal 2005, compared to 28.3 percent for fiscal 2004. This increase was primarily driven by additional management training costs and the $400 in severance costs required to close the acquired Jillian's complex located at the Mall of America.

Other store operating expenses

Other store operating expenses increased 210 basis points to 32.7 percent for fiscal 2005, compared to 30.6 percent for the same period of 2004. Occupancy costs as a percentage of total revenues increased 80 basis points as a result of Jillian's higher rent and tax costs compared to their sales volumes. Increases in utility costs (50 basis points) and restaurant expense (70 basis points) also contributed to the overall increase.

General and administrative expenses

General and administrative expenses consist primarily of personnel, facilities and professional expenses for the various departments of corporate headquarters. General and administrative expenses, as a percentage of revenues, remained flat for fiscal 2005, compared to 2004. The increase in absolute dollars of approximately $4,900 was primarily attributable to increases in personnel costs and services in support of the acquired Jillian's locations and new store growth.

Depreciation and amortization expense

Depreciation and amortization expense increased primarily due to ongoing expense associated with the Jillian's locations acquired in November 2004 and the charge related to the August 28, 2005 closure of the Jillian's complex located at the Mall of America in Bloomington, Minnesota. We closed the complex due to continuing operating losses and unsuccessful efforts to renegotiate the terms of the related leases. As a result of the closing, we recorded a pre-tax charge of approximately $2,500 in the second quarter of 2005. The charge consisted of additional depreciation, amortization and impairment of the assets which were abandoned and whose carrying value was not recoverable as of July 31, 2005.

Startup costs

Startup costs include costs associated with the opening and organizing of new complexes or conversion of existing complexes, including the cost of feasibility studies, staff-training and recruiting and travel costs for employees engaged in such startup activities. All startup costs are expensed as incurred. Through October 30, 2005, rent incurred between the time construction is substantially completed and the time the complex opens was included in startup costs. Beginning October 31,2005, all rent incurred during the construction period is expensed and included in startup costs. The increase in startup costs as a percentage of revenues is primarily attributed to the opening of our Omaha, Buffalo and Kansas City locations in the second, third, and fourth quarters of 2005 compared to the opening of our Santa Anita location in the third quarter of 2004. Startup costs were also impacted in fiscal 2005 due to the conversion of five of our Jillian's locations to our new "Dave & Buster's Grand Sports Café" brand.

Interest expense

Interest expense as a percentage of revenues remained flat as a percentage of revenues, however increased in absolute dollars approximately $1,100. The increase in absolute dollars is attributed to the increased borrowings under our debt facility as a result of the Jillian's acquisition. During fiscal year 2005, we reduced our outstanding debt by approximately $8,000.

Provision for income taxes

Our effective tax rate differs from the statutory rate primarily due to the deduction for FICA tip credits and state income taxes.

Fiscal 2004 compared to fiscal 2003

Revenues

Total revenues increased 7.6 percent, or approximately $27,400, for fiscal 2004 compared to fiscal 2003. The acquisition of nine Jillian's locations in the fourth quarter of fiscal 2004 contributed approximately $19,800 of the increase ($11,300 of additional food and beverage revenue and $8,500 of additional amusements and other revenue). The revenue increase was generated from the following components of our operations:

Acquired Jillian's branded stores	5.5%
Non-comparable Dave & Buster's branded stores	2.8%
Comparable Dave & Buster's branded stores	(0.2)%
Other	(0.5)%
Total increase	7.6%

Comparable store total revenues for fiscal 2004 were down approximately $800 (0.2 percent) from results achieved in 2003. Food and beverage revenues were up approximately 0.7 percent over 2003 driven primarily by a 2.8 percent increase in comparable beverage revenues. Food revenues were down 0.4 percent from fiscal 2003 at our comparable stores. Amusement revenues declined by 1.6 percent from 2003. We believe the decline in our comparable store revenues resulted primarily from the impact of the economic conditions on our guests' discretionary income.

Revenue from non-comparable Dave & Buster's stores (stores not included in the comparable base) increased primarily from the 53 additional store weeks in 2004 at our Toronto location, which was acquired in 2003 and the opening of a new Dave & Buster's in Arcadia, California. In 2004, our revenue mix was 53.7 percent for food and beverage and 46.3 percent for amusements and other revenue. This compares to 52.9 percent and 47.1 percent, respectively, for 2003. Continued emphasis on special events and party business had a positive impact with comparable store party sales at 16.1 percent of total revenues compared to 15.5 percent last year.

Cost of products

Cost of products as a percentage of revenues decreased to 18.7 percent for fiscal 2004 from 18.8 percent for fiscal 2003. Increases in food and beverage costs, which were principally attributed to higher prices of cooking oil and other groceries, were partially offset by a decrease in the cost of amusements of approximately 70 basis points. This reduction was significantly influenced by reduced costs achieved through our direct import of merchandise from Asia.

Operating payroll and benefits

As a percentage of revenue, operating payroll and benefits were 28.3 percent in fiscal 2004, down 60 basis points from 28.9 percent in fiscal 2003 due to continued labor control initiatives. Operating payroll and benefits increased, in absolute dollars, to approximately $110,500 for fiscal 2004 from approximately $105,000 for fiscal 2003, an increase of $5,500, or 5.3 percent. The increase in absolute dollars was attributed to the addition of approximately 1,600 employees at the acquired Jillian's locations, the opening of a new complex in California and a full year of payroll from the Toronto location.

Other store operating expenses

As a percentage of revenues, other store operating expenses were 30.6 percent in fiscal 2004 compared to 29.9 percent in fiscal 2003. The increase is primarily a result of approximately $4,200 additional in marketing expenses and expenses associated with an additional 117 weeks of non-comparable store operations over fiscal 2003.

General and administrative expenses

General and administrative expenses, as a percentage of revenues, were 6.7 percent for fiscal 2004 compared to 6.9 percent in fiscal 2003. The increase in absolute dollars in 2004 compared to 2003 was primarily attributable to expenditures related to compliance with the requirements of the Sarbanes-Oxley Act.

Depreciation and amortization expense

Depreciation and amortization expense increased to approximately $34,200 in fiscal 2004 compared to $32,700 in fiscal 2003, an increase of $1,500, or 4.6 percent. The increase was primarily a result of the addition of new stores through acquisition and construction.

Startup costs

Startup costs totaled approximately $1,300 in 2004. We opened one new store (Arcadia, California) in 2004 and no new stores were opened in 2003.

Interest expense

Interest expense decreased to approximately $5,600 in fiscal 2004 compared to $6,900 in fiscal 2003, a decrease of $1,300, or 19.4 percent. Debt reductions prior to the Jillian's acquisition and increased interest capitalization as a result of new store construction and other capital projects contributed to the overall reduction in interest expense in fiscal year 2004 from prior year amounts.

Provision for income taxes

The effective tax rate for fiscal 2004 was 35.0 percent in fiscal 2004 compared to 34.0 percent in fiscal 2003. The increase in the effective tax rate is primarily attributed to increases in the state tax component of our provision primarily due to the acquisition of Jillian's, offset by the deduction for FICA tip credits.

Liquidity and capital resources

Total cash requirements of the Merger of approximately $337,679 were used to (i) purchase our common stock, outstanding options and warrants, and shares issued upon the conversion of our convertible subordinated notes; (ii) redeem our convertible subordinated notes if not previously converted; (iii) repay in full all funds borrowed under our existing credit facility, and terminate such facility; and (iv) to pay certain fees, costs and expenses related to the Merger. These financing requirements were financed through a cash equity contribution of $108,100 by affiliates of Wellspring and HBK, proceeds from a new $160,000 senior secured credit facility and proceeds from the issuance of $175,000 Restricted Notes. See "Summary—The Transactions."

In connection with the Merger, we terminated our existing credit facility and entered into a new senior secured credit facility (the "Senior Credit Facility") that provides a $100,000 term loan facility (with up to $50,000 of the term loan facility available on a delayed-draw basis for a period of six months) with a maturity of seven years from the closing date of the Merger and provides a $60,000 revolving credit facility with a maturity of five years from the closing date of the Merger. The $60,000 revolving credit facility includes (i) a $20,000 letter of credit sub-facility, (ii) a $5,000 swingline sub-facility and (iii) a $5,000 (in US Dollar equivalent) sub facility available in Canadian dollars to the Canadian subsidiary. The revolving credit facility will be used to provide financing for working capital and general corporate purposes. As of April 30, 2006, borrowings under the revolving credit facility were $12,414, we drew approximately $50,000 under the term loan facility and had $6,200 in letters of credit outstanding.

Our Senior Credit Facility is secured by all of our assets. On April 30, 2006, borrowings under the revolving credit facility and term debt facility were $12,414 and $50,000, respectively. Borrowings on the credit facility bear interest at a floating rate based upon the bank's prime interest rate 7.75 percent at April 30, 2006) or, at our option, the applicable Eurodollar rate 5.06 percent at April 30, 2006), plus a margin, in either case, based upon financial performance, as prescribed in the new credit facility.

Interest rates on borrowings under our Senior Credit Facility vary based on the movement of prescribed indexes and applicable margin percentages. See "Description of other indebtedness—our senior credit facility." On the last day of each calendar quarter, we are required to pay a commitment fee in respect to any unused commitments under the revolving credit facilities or the term loan facility. Our Senior Credit Facility requires scheduled quarterly payments of principal on the term loans at the end of each of our fiscal quarters beginning June 2006 in aggregate annual amounts equal to 1 percent

of the original aggregate principal amount of the term loan with the balance payable ratably over the final four quarters. Our indebtedness increased $157,239 as of January 29, 2006 to $237,414 as of April 30, 2006 and, as a result, our annual interest expense increased materially.

The Senior Credit Facility and the indenture governing the Exchange Notes contain restrictive covenants that, among other things, limit our ability and the ability of our subsidiaries to, among other things: incur additional indebtedness, make loans or advances to subsidiaries and other entities, make capital expenditures, declare dividends, acquire other businesses or sell assets. In addition, under the Senior Credit Facility, we are required to meet certain financial covenants, ratios and tests, including a minimum fixed charge coverage ratio and a maximum leverage ratio. The indenture under which the Exchange Notes are to be issued also contain customary covenants and events of defaults. See "Description of other indebtedness."

We believe that cash flow from operations, together with borrowings under the Senior Credit Facility, will be sufficient to cover our working capital, capital expenditures and debt service needs in the foreseeable future. Our ability to make scheduled payments of principal or interest on, or to refinance, our indebtedness, or to fund planned capital expenditures, will depend on our future performance, which is subject to general economic conditions, competitive environment and other factors as described in the "Risk factors" section of this prospectus.

Historical cash flows

First Quarter 2006 compared to First Quarter 2005

As of April 30, 2006, we had cash and cash equivalents of $15,323 and available borrowing capacity of $41,386 under our Senior Credit Facility.

Cash flow from operations was $15,930 for the first quarter of 2006 compared to $13,369 for the first quarter of 2005. The increase in cash flow from our operations was partially offset by $1,596 in required payments for income taxes and $2,087 in required interest payments during the first quarter of 2006.

Cash used in investing activities was $291,189 for the first quarter of 2006 compared to $10,849 for the first quarter of 2005. The investing activities for the first quarter of 2006 consisted of cash paid in connection with the Merger of $213,102 consideration paid to stockholders, $44,390 consideration paid to convertible note and warrant holders, $9,279 consideration paid to option holders, and $7,940 in transaction costs and $16,555 of capital expenditures. The capital expenditures primarily related to new store development and construction costs for our Times Square location, which opened on April 5, 2006, conversion costs for one of our Jillian's complexes to the "Dave & Buster's Grand Sports Café" brand. The investing activities for the first quarter of 2005 included over $3,700 in games, approximately $1,400 for new store development and construction (primarily construction costs for the July 2005 store opening in Omaha, Nebraska) and normal capital expenditures at existing stores.

We plan on financing our future growth through operating cash flows, debt facilities and tenant improvement allowances from landlords. We expect to spend approximately $43,800 (excluding tenant improvement allowances) in capital expenditures during fiscal year 2006. Our 2006 expenditures will include approximately $19,800 for new store construction, and $24,000 in maintenance capital and new games. On April 5, 2006, we opened one new complex in Times Square and anticipate opening an additional complex in 2006 near Minneapolis, Minnesota.

Cash provided from financing activities was $283,000 for the first quarter of 2006 compared to cash used from financing activities of $4,967 in the first quarter of 2005. Proceeds from debt incurred in connection with the Merger aggregated $237,414 and cash equity contributions received in connection with the Merger aggregated $108,100. These proceeds were used to acquire common stock of the

Predecessor and to repay in full all obligations related to funds borrowed under our existing credit facility, and terminate such facility.

Holders of up to approximately 2.6 million shares notified us of their intent to exercise dissenters' rights and initiate proceedings under Section 351.455 of the General and Business Corporation Law of Missouri to demand fair value with respect to their shares. On July 10, 2006, the Company and all dissenting shareholders reached an agreement which provides, among other things, for the permanent and irrevocable settlement of all claims between the parties associated with the Merger or the dissenting action. The settlement agreement requires the Company to pay approximately $51,733 to the Shareholders on or before August 15, 2006.

Payments of the settlement will be funded from borrowings under the Senior Credit Facility. Accordingly, we have recorded a long-term liability of $51,733 related to our obligation under the settlement agreement.

Fiscal 2005 compared to fiscal 2004 and fiscal 2003

Net cash provided by operating activities increased to $65,423 in 2005 compared to $49,064 in 2004 and $43,670 in 2003. The increases were attributed primarily to the complimentary changes in the components of working capital and deferred rent.

Cash used in investing activities was $63,271 in 2005 compared to $81,772 in 2004 and $27,421 in 2003. The investing activities for 2005 included approximately $8,900 to purchase games, approximately $30,700 for new store development and construction (primarily construction costs for the new stores, which opened in Omaha, Nebraska, Buffalo, New York and Kansas City, Kansas in July, October and November 2005, respectively) and normal capital expenditures at previously existing stores. The addition of three new complexes represents our largest new store construction efforts since 2001. We spent approximately $3,500 in capital expenditures during fiscal 2005 to convert five Jillian's stores to the "Dave & Buster's Grand Sports Café" brand. The majority of the re-branding expenditures were incurred in the fourth quarter of fiscal 2005.

In October 2005, we acquired the general partner interest in a limited partnership, which owns a Jillian's complex in the Discover Mills Mall near Atlanta, Georgia. The cost of this interest, acquired pursuant to an auction held by the bankruptcy court was $1,169 The current agreement provides for payment of a preferred return to the limited partners and a management fee to us prior to distributions of other net operating income or losses.

The investing activities for 2004 included the acquisition of the nine Jillian's locations, which required cash of $47,876 and $34,234 of other capital expenditures, the opening of our Arcadia, California store, installation of MICROS point-of-sale systems at all Dave & Buster's locations, completion of our Winner's Circle conversion projects and normal capital expenditures. The investing activities for 2003 included over $9,000 to purchase games, the $3,600 acquisition of the Toronto complex from a licensee and normal capital expenditures at previously existing stores.

Cash used in financing activities was $5,957 in 2005 compared to cash provided of $37,160 in 2004 and a use of cash of $16,729 in 2003. The 2005 cash used in financing activities was used to reduce outstanding debt balances. The 2004 cash provided by financing activities was the result of increased debt used to fund the Jillian's acquisition, net of debt pay down during the first three quarters of 2004. Cash used in financing activities in fiscal 2003 was used to reduce outstanding debt balances and payment of debt fee costs.

Contractual obligations and commercial commitments

The following tables set forth our contractual obligations and commercial commitments as of April 30, 2006 (excluding interest):

	Payment due by period				
	Total	1 year or less	2-3 years	4-5 years	After 5 years
			(In thousands)		
Senior Credit Facility(1)(3)	$ 62,414	$ 500	$ 1,000	$ 1,000	$ 59,914
Senior notes	175,000	—	—	—	175,000
Operating leases under sale/leaseback transactions	54,459	3,171	6,468	6,639	38,181
Other operating leases(2)	501,872	36,930	73,931	73,902	317,109
Payable to dissenting shareholders(3)	51,733	51,733	—	—	—
Other	11	6	5		
Total	$ 845,489	$ 92,340	$ 81,404	$ 81,541	$ 590,204

(1) Our Senior Credit Facility includes a $60,000 revolving credit facility, with a $20,000 letter of credit sub-facility and a Canadian $5,000 revolving sub-facility. As of April 30, 2006, borrowings under the revolving credit facility were $12,414, we drew approximately $50,000 under the term loan facility and had $6,200 in letters of credit outstanding.

(2) During the fourth quarter of 2005, our board of directors approved an operating lease agreement for a future site located near Minneapolis, Minnesota, which we anticipate opening in fiscal 2006. Future obligations related to this agreement are included in the table above. We have an operating lease agreement for a future site located near Tempe, Arizona. Our commitments under the Tempe, Arizona agreement are contingent upon, among other things, the landlord's delivery to us of access to the premises for construction. Further obligations related to this agreement are not included in the table above.

(3) On July 10, 2006 the Company reached an agreement with all shareholders who had exercised their dissenter rights under the General Business Corporation Law of Missouri. The agreement provides for the permanent and irrevocable settlement of all claims between the parties. The settlement agreement requires the Company to pay approximately $51,733 to the shareholders on or before August 15, 2006. Payments of the settlements will be funded from borrowings under the Senior Credit Facility.

Accounting policies

We believe that the following critical accounting policies, among others, represent our more significant judgments and estimates used in the preparation of our consolidated financial statements.

Purchase Accounting—We have accounted for the Merger in accordance with Statement of Financial Accounting Standards (SFAS) 141, "Business Combinations," whereby the purchase price paid is allocated to record the acquired assets and liabilities assumed at fair value on the closing date of the Merger. The Merger and the allocation of the purchase price have been recorded as of March 8, 2006. In connection with the preliminary purchase price allocation, we have made estimates of the fair values of our long-lived and intangible assets based upon assumptions that we believe are reasonable related to discount rates and asset lives utilizing currently available information, and in some cases, preliminary valuation results from independent valuation specialists. As of April 30, 2006, we have recorded preliminary purchase accounting adjustments to the carrying value of our property and equipment, to

establish intangible assets for our tradenames and trademarks and to revalue our rent liability, among other matters. This allocation of the purchase price is preliminary and subject to finalization of independent analysis. The allocation of the purchase price is subject to change based on completion of such studies, resolution of matters related to dissenting shareholders and the resolution of certain personnel matters. The adjustments, if any, arising out of the finalization of the allocation of the purchase price will not impact our cash flows including cash interest and rent. However, such adjustments could result in material increases or decreases to net income and earnings before interest expense, income taxes, depreciation and amortization. Further revisions to the purchase price allocation will be made as additional information becomes available.

Property and equipment—Expenditures that substantially increase the useful lives of the property and equipment are capitalized, whereas costs incurred to maintain the appearance and functionality of such assets are charged to repair and maintenance expense. Interest costs and rent (through October 30, 2005) incurred during construction are capitalized and depreciated based on the estimated useful life of the underlying asset. Interest costs capitalized during the construction of facilities in 2005, 2004 and 2003 were $295, $668, and $170, respectively. As disclosed under "Recent Accounting Pronouncements" below, beginning October 31, 2005, we no longer capitalize such rental costs. These costs are depreciated over various methods based on an estimate of the depreciable life, resulting in a charge to our operating results. Our actual results may differ from these estimates under different assumptions or conditions.

Reviews are performed regularly to determine whether facts or circumstances exist that indicate the carrying values of our property and equipment are impaired. We assess the recoverability of our property and equipment by comparing the projected future undiscounted net cash flows associated with these assets to their respective carrying amounts. Impairment, if any, is based on the excess of the carrying amount over the estimated fair market value of the assets. Changes in the estimated future cash flows could have a material impact on our assessment of impairment.

Income taxes—We use the liability method for recording income taxes 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.

The calculation of our tax liabilities involves significant judgment and evaluation of uncertainties in the interpretation of complex tax regulations. As a result, we have established reserves for taxes that may become payable in future years as a result of audits by tax authorities. Tax reserves are reviewed regularly pursuant to Statement of Financial Accounting Standard No. 5 "Accounting for Contingencies." Tax reserves are adjusted as events occur that affect our potential liability for additional taxes, such as the expiration of statutes of limitations, conclusion of tax audits, identification of additional exposure based on current calculations, identification of new issues, or the issuance of statutory or administrative guidance or rendering of a court decision affecting a particular issue. Accordingly, we may experience significant changes in our tax reserves in the future if, or when, such events occur.

Accounting for amusements operations—Deposits on Power Cards used by guests to activate most of our midway games are generally recognized at the time of sale rather than when utilized, as the estimated amount of unused deposits which will be used for future game activations has historically not been material to our financial position or results of operations. Certain of our midway games allow guests to earn coupons which may be redeemed for prizes. The cost of these prizes is included in the cost of amusement products and is generally recorded when the coupons are redeemed, we have established a liability for the estimated amount of earned coupons which will be redeemed in future periods.

Accounting for smallware supplies—Prior to the Merger, smallware supplies inventories, consisting of china, glassware and kitchen utensils were capitalized at the store opening date, or when the smallwares inventory is increased due to changes in our menu, and are reviewed periodically for valuation. Smallware replacements are expensed as incurred. Through the purchase price allocation, smallwares inventory was reclassified to property and equipment. In addition, we will record smallwares as fixed assets and amortize smallwares over an estimated useful life of 7 years.

Recent accounting pronouncements

In October 2005, the Financial Accounting Standards Board ("FASB") issued a FASB Staff Position ("FSP"), FAS 13-1, "Accounting for Rental Costs Incurred during a Construction Period." The FSP addresses accounting for rental costs associated with building and ground operating leases that are incurred during a construction period. The Board concluded that such rental costs incurred during a construction period should be recognized as rental expense. The FSP requires a lessee to cease capitalizing rental costs as of the first reporting period beginning after December 15, 2005. Early adoption was permitted. Accordingly, effective October 31, 2005, we no longer capitalize rent incurred during the construction period. The impact of this new standard on our future financial statements will be dependent on the number of complexes opened each period and the terms of the related lease agreements.

In December 2004, the FASB issued SFAS No. 123R, "Share-Based Payments," SFAS No. 123R is a revision of SFAS No. 123, "Accounting for Stock Based Compensation," and supersedes APB 25. Among other items, SFAS 123R eliminates the use of APB 25 and the intrinsic value method of accounting, and requires companies to recognize in the financial statements the cost of employee services received in exchange for awards of equity instruments, based on the fair value of those awards on the grant date. The effective date of SFAS 123R is the first reporting period beginning after June 15, 2005. We adopted SFAS No. 123R as of the beginning of our first quarter of 2006 using the modified prospective method, which required us to record stock compensation for all unvested and new awards as of the adoption date. Accordingly, we have not restated prior period amounts presented herein. We recorded non-cash charges for stock compensation of approximately $25 in the period from January 30, 2006 to March 7, 2006. The impact of SFAS 123R on our results of operations for the period after the Merger cannot be predicted at this time, because no additional options have been issued.

Quantitative and qualitative disclosures about market risk

We have market risk associated with our foreign operations. We have market risk relating to changes in the general level of interest rates. Our earnings are affected by changes in interest rates due to the impact of those changes on our interest expense from variable rate debt. Effective June 30, 2006, we entered into two interest rate swap agreements that expire in 2011, to change a substantial portion of our variable rate debt to fixed rate debt. Pursuant to the swap agreements, the interest rate on notional amounts is fixed at 5.31%. Our agreements to fix a portion of our variable rate debt mitigate our interest rate risk.

Our market risk associated with our foreign operations is considered by management to be immaterial due to the limited size of our investment in the Toronto operations compared to our total portfolio of operating restaurant/entertainment complexes. The result of an immediate 10 percent devaluation of the U.S. dollar in 2006 from January 29, 2006 levels relative to our foreign currency translation would result in a decrease in the U.S. dollar-equivalent of foreign currency denominated net income and would be insignificant.

BUSINESS

Overview

We are North America's largest operator of large-format, high-volume restaurant/entertainment complexes. Our complexes combine high-quality casual dining with an extensive array of entertainment attractions. Our menu includes a wide variety of moderately-priced food and beverage offerings, and our highly-trained staff provide attentive and friendly service for our guests. Our complexes appeal to a diverse customer base by providing a distinctive entertainment and dining experience in a high-energy, casual setting. Founded in 1982 with a single location, we have since grown to become a leader in the restaurant /entertainment industry, operating 47 units across the United States and Canada.

We currently serve approximately 19 million guests per year, comprised of an almost equal number of men and women. Our complexes cater primarily to adults aged 21 to 44 and operate seven days a week, typically from 11:30 a.m. to midnight on weekdays and 11:30 a.m. to 2:00 a.m. on weekends. Our average complex is 52,000 square feet in size, but the size of our complexes can range between 28,000 and 68,000 square feet, depending on the characteristics of the markets in which they are located. We carefully select the appropriate size and location of our new complexes after thoroughly analyzing a variety of economic, demographic and strategic considerations.

The layout of each complex is designed to maximize guest crossover between its multiple entertainment and dining areas. Each location provides full, sit-down food service not only in the restaurant areas, but also in various locations within the complex. Our menu places special emphasis on quality meals, including gourmet pastas, steaks, sandwiches, salads and an outstanding selection of desserts. We update our menus on a regular basis to reflect current trends and guest favorites. Each of our locations offers full bar service throughout the complex, including over 35 different beers and a wide selection of wine, spirits and non-alcoholic beverages.

Our amusement offerings include state-of-the-art simulators, high-tech video games, traditional pocket billiards and shuffleboard, as well as a variety of redemption games, which dispense coupons that can be redeemed for prizes in our Winner's Circle. Our redemption games include basic games of skill, such as skee-ball and basketball, and the prizes in our Winner's Circle range from small-ticket novelty items to high-end electronics, such as flatscreen televisions.

In addition, each of our locations has multiple special event facilities that are used for hosting private parties, business functions and other corporate sponsored events. We believe our special event facilities provide a highly attractive alternative to traditional restaurants and hotels, which generally do not offer combined entertainment and dining.

We believe that each location's combination of high-quality food and beverages, multiple entertainment attractions, superior service and commitment to casual fun for adults provides a unique dining and entertainment experience for our guests.

For the thirteen weeks ended April 30, 2006 (Combined):

- approximately 54.4% of total revenues was derived from food and beverage and 45.6% was derived from amusements; and
- approximately 12.8% of total revenues was derived from special events.

For the fiscal year ended January 29, 2006:

- approximately 54.8% of total revenues was derived from food and beverage and 45.2% was derived from amusements; and
- approximately 16.4% of total revenues was derived from special events.

Strengths

Strong recurring cash flow. We have a proven track record of generating strong, stable cash flow from our existing portfolio of complexes. We invest in each of our facilities on a systematic and regular basis, which allows us to avoid major periodic refurbishments and provides us with greater cash flow stability. We have generally used our internally generated cash flow after maintenance capital expenditures to fund our new store growth and to reduce our long-term debt.

Substantial embedded benefit from recent initiatives. We believe that we are well positioned to continue to benefit from a number of our recent initiatives designed to increase our sales and cash flow, maximize our capacity utilization and cross-sell our food and game offerings. During 2005 and the first quarter of fiscal 2006, we:

- opened three new complexes during the second half of fiscal 2005 and added an additional complex in the first quarter of fiscal 2005, the full year benefit of which we will receive in fiscal year 2006 and beyond; and

- developed a national-cable television advertising campaign that has been recently launched.

Unique and competitively differentiated market position. Our combination of high-quality casual dining and exciting entertainment attractions provides our guests with a unique experience. We provide the convenience and enjoyment of a one-stop dining and entertainment experience which provides an attractive alternative to traditional leisure activities, such as dinner and a movie. Furthermore, our distinct restaurant, bar and entertainment areas allow our guests the flexibility to enjoy any combination of our offerings. We believe the large scale and complexity of our operations, significant capital investments required to open new sites and our operational expertise provide us with a substantial competitive advantage.

Proven twenty-three year operating history and management expertise. Dave & Buster's is a time-tested concept that has been popular with our customers since 1982, the year we opened our first complex in Dallas, Texas. We have since added 46 complexes in the United States and Canada.

Our management team has developed an expertise for operating large-format, high-volume restaurant/entertainment complexes. We believe that our management's extensive experience in the restaurant/entertainment industry provides them with strong insights into our loyal customer base and enables us to create a dynamic entertainment environment for our guests. We believe our strong track record of selecting and operating successful new locations demonstrates the continuing appeal of the Dave & Buster's brand.

Growing special events business. Our corporate and group special events business is an important and growing component of our revenue stream. Our special events business is important to us because it generates strong margins, can be scheduled during off-peak hours and introduces a significant number of our guests to the Dave & Buster's concept. Each of our complexes offers multiple venues for hosting these events, including private rooms with a full range of audio/visual equipment. We believe our special event facilities provide a highly attractive alternative to traditional restaurants and hotels, which generally do not offer combined entertainment and dining. We have grown our special events revenue from $42.0 million in fiscal year 2001 to $76.0 million in fiscal year 2005, representing a 12.6 percent compound annual growth rate.

Loyal and local customer base. Our strong operating history has been driven in large part by repeat business from our local customer base. Our typical guests tend to live within 15 miles of our complexes and spend approximately $24.00 per visit. Our average guest visits one of our locations two times a year and our most frequent guests visit our complexes multiple times per week. As a result, we believe our revenues are not highly dependent upon the tourist economy.

Commitment to guest satisfaction. We make a significant effort to consistently deliver a unique experience and maximize guest enjoyment in both our dining and entertainment offerings. We regularly update our menus based on popular trends and guest favorites. We attempt to differentiate ourselves by offering a wide variety of entertainment options and providing our guests with the opportunity to interact and enjoy friendly competition with friends, family members and co-workers.

Strategy

Continue to enhance existing operations. We believe the following strategies will drive same-store sales growth, increase traffic during off-peak times and enhance the value perception of our combined food, beverage and entertainment offerings among our guests.

- *Continue to drive customer value and generate off-peak business through promotions*. We will continue to utilize innovative promotions to drive increased business at our existing locations. In 2005, we introduced our Power Combo promotion which combined our dining and entertainment offerings for the first time in our history. Power Combo provides our guests with the option to purchase a $10.00 Power Card combined with a select entree for a total price of $15.99 to $18.99. At the same time, we introduced our Super Charge promotion which enables our guests to increase the value of newly purchased or refilled Power Cards by twenty-five percent for a discounted amount. These promotions have been well received by our guests and, since their introduction, we have experienced eight consecutive months of positive comparable same-store sales growth.

- *Enhance profitability and generate future business through special events*. We have a dedicated special events sales team that will continue to pursue profitable special events business with both new and existing clients. We will continue to explore methods of expanding this component of our business through menu enhancements and innovative sales techniques to drive improvements in same-store sales and increase our profitability.

- *Complete the revitalization of the Jillian's locations*. We will continue revitalizing the former Jillian's locations converted to our new "Dave & Buster's Grand Sports Café" brand to improve their operating performance. We completed the re-branding of five Jillian's locations in late 2005 and converted one additional store in the first quarter of 2006. As part of this effort, we are refurbishing facilities, updating and enhancing our amusement and menu offerings, providing additional training to our employees and re-negotiating leases. In addition, we have replaced each former Jillian's store manager with an experienced Dave & Buster's-trained manager. We will continue to evaluate the performance of the converted stores in order to determine if conversion of the remaining units is appropriate.

Maintain focus on disciplined growth. We have implemented, and will continue to follow, a highly disciplined growth strategy. We conduct comprehensive evaluations of potential locations to select only those that we believe will generate attractive returns on investment. Prior to selecting a location, we thoroughly analyze demographic, economic, strategic and other factors. Our disciplined growth strategy has resulted in our new locations typically generating positive cash flow from their first day of operations. Consistent with our growth strategy, we opened three new complexes during 2005, one new complex in 2006 and expect to open one additional complex during 2006. We believe that our scalable new store model will continue to provide us with the flexibility to expand into a wide variety of both urban and suburban locations.

Offerings

We offer a unique combination of high-quality casual dining with an extensive array of entertainment attractions, such as pocket billiards, video games, interactive simulators and traditional redemption-style games of skill.

Food and beverage

Our menu places special emphasis on quality meals, including gourmet pastas, steaks, sandwiches, salads and an outstanding selection of desserts. We update our menus on a regular basis to reflect current trends and guest favorites. Each of our locations offers full bar service throughout the complex, including over 35 different beers and a wide selection of wine, spirits and non-alcoholic beverages. We believe that each location's combination of high-quality food and beverages and attentive and friendly service provides a unique dining experience for our guests.

Entertainment

Our locations offer an extensive array of amusements and entertainment options including "Million Dollar Midway" games and "Traditional" games. Furthermore, our complexes are equipped with multiple televisions and high-quality audio systems offering our guests an attractive venue for watching live sports matches and other televised events.

Million Dollar Midway games. The largest area in each complex is the Million Dollar Midway, which is designed to provide high-energy entertainment through a broad selection of electronic, skill and sports-oriented games. The Million Dollar Midway includes both classic midway game entertainment and high-technology games.

- Classic midway game entertainment includes sports-oriented games of skill, redemption-style games and Dave & Buster's Downs, which is one of several multiple player race games offered in each entertainment complex. 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 our Dave & Buster's logo. The prizes include electronic equipment, sports memorabilia, stuffed animals, clothing and small novelty items.

- High-technology game attractions vary among the complexes and may include large screen interactive electronic games, such as the multiplayer Daytona USA racing simulator and Derby Owners Club.

A Power Card activates most midway games and can be recharged for additional play. The Power Card enables guests to activate games more easily and encourages extended play of games. By replacing coin-activation, the Power Card eliminates the technical difficulties and maintenance issues associated with coin-activated equipment. Furthermore, the Power Card increases our flexibility to adjust the pricing and promotion of our games.

Traditional games and entertainment. In addition to the attractions in the Million Dollar Midway, each of our locations offers a number of traditional entertainment options. These traditional offerings include pocket billiards, shuffleboard tables, and also include special event rooms, which are designed for hosting private social parties, business gatherings and sponsored events.

Location and development

We believe that the location of our complexes is critical to our long-term success. Significant time and resources are devoted to thoroughly analyze each prospective site. In general, we target high-profile sites within metropolitan areas. We seek areas with populations of between 500,000 and one million for our intermediate-size sites, and areas with populations over one million for our mega-size sites. During our diligence process, we carefully analyze a variety of economic and demographic information such as average income levels, consumer preferences and age distribution for each prospective site. In addition, we also consider other factors, including the following:

- visibility;

- parking and accessibility to regional highway systems;

- zoning;
- regulatory restrictions;
- proximity to shopping areas, office complexes, tourist attractions, theaters and other high-traffic venues;
- competition; and
- regional economic outlook.

We continually seek to identify and evaluate new locations for expansion. The exterior and interior layout of our complexes is flexible and can be readily adapted to different types of buildings. We open complexes in both new and existing structures, and in both urban and suburban areas. The typical cost of opening a mega-size Dave & Buster's has ranged from approximately $10.0 million to $12.0 million, excluding preopening expenses and developer allowances, depending upon the location and condition of the premises. For intermediate-size models, the typical cost has ranged from approximately $7.0 million to $9.0 million, excluding preopening expenses and developer allowances, depending upon the location and condition of the premises. Our typical complex currently ranges from $7.0 million to $12.0 million, excluding preopening expenses and developer allowances. We typically receive developer allowances that range from $1.4 million to $3.0 million resulting in a net cash cost of $5.9 million to $9.0 million, exclusive of preopening costs. We expect both mega-size and intermediate-size models to generate a similar return on investment and positive Store-level cash flow from the first day of operations.

We base our decision of owning or leasing a site on the complex's projected economics and availability of the site for purchase. Opening a leased facility reduces our capital investment in a complex because we do not incur land and site improvement costs and may also receive a construction allowance from the landlord for improvements. We currently lease 43 of our 47 locations.

Marketing, advertising and promotion

Our corporate marketing department manages our marketing, advertising and promotional programs with the assistance of an external advertising agency and a national public relations firm. In addition, our corporate marketing department is also responsible for controlling media and production costs. We anticipate spending approximately $19.0 million in our marketing efforts for fiscal year 2006 compared to approximately $16.0 million in fiscal 2005.

In order to expand our guest base, we focus our marketing efforts in three key areas:

- advertising and system-wide promotions;
- field marketing and local promotions; and
- special events for corporate and group guests.

We regularly conduct market research to better understand our brand, our guests and to develop engaging messages and promotional programs. In addition, we develop marketing and media plans that are highly localized and designed to support individual market opportunities and local store marketing initiatives. We continue to utilize in-store promotions, emails and customer communications to increase visit frequency and average check size.

Our corporate and group sales programs are managed by our sales department, which provides direction, training, and support to our special events managers and their teams within each complex. The primary focus for the special events sales teams is to identify and contact corporations, associations, organizations, and community groups within the team's marketplace for 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 cultivation of repeat business.

Seasonality

The fourth quarter of our fiscal year achieves the highest revenue and profitability, primarily as a result of the significant special events business during the period. This special events business is impacted by the number of holiday parties held during this time of the year. The third quarter is normally the lowest producing quarter in terms of revenue and profitability with first and second quarter being somewhat similar in results.

Competition

The restaurant industry is highly competitive, and competition among major companies that own or operate restaurant chains is especially intense. Restaurants compete on the basis of name recognition and advertising; the price, quality, variety, and perceived value of their food offerings; the quality of their customer service; and the convenience and attractiveness of their facilities. In addition, despite recent changes in economic conditions, competition for qualified restaurant-level personnel remains high.

The out-of-home entertainment market is highly competitive. There are a large number of businesses that compete directly and indirectly with us. Although we believe most of our competition comes from localized single attraction facilities that offer a limited entertainment package, we may encounter increased competition in the future. In addition, we may also face increased competition from home-based forms of entertainment such as internet game play and home movie delivery.

Foreign operations

In fiscal 2004, we acquired the operations of Funtime Hospitality Corp., our former Canadian licensee located in Toronto, for $4.1 million. This complex generated revenue of $9.1 million in fiscal 2005, representing approximately 2.0% of our consolidated revenue. As of April 30, 2006, we had less than 1.5% of our long-lived assets located outside the United States. Our foreign activities are subject to various risks of doing business in a foreign country, including currency fluctuations, changes in laws and regulations and economic and political stability. We do not believe there is any material risk associated with the Canadian operations or any dependence by our domestic business upon the Canadian operations.

Suppliers

The principal goods used by us are games, prizes and food and beverage products, which are available from a number of suppliers. We have also expanded our contacts with amusement merchandise suppliers through our direct import program. Federal and state mandated increases in the minimum wage could have the repercussion of increasing our expenses, as our suppliers may be severely impacted by higher minimum wage standards.

Intellectual property

We have registered the trademarks Dave & Buster's® and Power Card® with the United States Patent and Trademark Office and in various foreign countries. We have also registered and/or applied for certain additional trademarks with the United States Patent and Trademark Office and in various foreign countries. We consider our trade name and our signature "bulls-eye" logo to be important features of our goodwill and seek to actively monitor and protect our interest in this property in the various jurisdictions where we operate.

In connection with our acquisition of nine Jillian's locations, we also acquired the Jillian's® tradename and certain other related marks.

Government regulation

We are subject to various federal, state, and local laws affecting our business. Each complex 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, county or municipality in which the complex is located. Each complex 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 complex, including minimum age of patrons and employees, hours of operation, advertising, wholesale purchasing, inventory control and handling, and storage and dispensing of alcoholic beverages. We have not encountered any material problems relating to alcoholic beverage licenses to date. The failure to receive or retain a liquor license, or any other required permit or license, in a particular location, or to continue to qualify for, or renew our licenses, could have a material adverse effect on our operations and our ability to obtain such a license or permit in other locations. The failure to comply with other applicable federal, state or local laws, such as federal and state wage and hour laws, may also materially and adversely affect our business.

We are also subject to "dram-shop" statutes in certain states in which our complexes are located. These statutes generally provide a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated individual. We carry liquor liability coverage as part of our existing comprehensive general liability insurance, which we believe is consistent with coverage carried by other entities in our industry. Although we are covered by insurance, a judgment against us under a "dram-shop" statute in excess of our liability coverage could have a material adverse effect on our operations.

As a result of operating certain entertainment games and attractions, including operations that offer redemption prizes, we are subject to amusement licensing and regulation by the states, counties and municipalities in which we have 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. We have, in the past, had to seek changes in state or local regulations to enable us to open a given location. To date, we have been successful in obtaining all such regulatory changes.

We are subject to federal, state and local environmental laws, regulations and other requirements, but these have not had a material adverse effect on our 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 complexes in particular locations. We are subject to the Fair Labor Standards Act, which governs such matters as minimum wages, overtime and other working conditions, along with the Americans With Disabilities Act and various family-leave mandates. Although we expect 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, we are uncertain of the repercussion, if any, of increased minimum wages on our other expenses, as our suppliers may be more severely impacted by higher minimum wage standards.

Employees

As of April 30, 2006, we employed approximately 8,300 persons, approximately 200 of whom served in administrative or executive capacities, approximately 600 of whom served as management personnel, and the remainder of whom were hourly personnel.

None of our employees are covered by collective bargaining agreements, and we have never experienced an organized work stoppage, strike, or labor dispute. We believe our working conditions

and compensation packages are competitive with those offered by our competitors and consider relations with our employees to be good.

Legal proceedings

On February 28, 2006, at a special meeting of our shareholders, holders of approximately 72% of our outstanding shares voted in favor of the adoption of the Merger Agreement. Holders of up to approximately 2.6 million shares notified us of their intent to exercise dissenters' rights and initiate proceedings under Section 351.455 of the General and Business Corporation Law of Missouri to demand fair value with respect to their shares. On July 10, 2006, the Company and all dissenting shareholders reached an agreement which provides, among other things, for the permanent and irrevocable settlement of all claims between the parties associated with the Merger or the dissenting action. The settlement agreement requires the Company to pay approximately $51.7 million to the shareholders on or before August 15, 2006. Payments of the settlement will be funded from borrowings under our senior secured credit facility.

We are named as a defendant in routine litigation incidental to our business, including negligence claims for personal injury, consumer claims, claims under federal or state laws governing access to public accommodations and employment-related claims. We are not currently subject to any pending legal proceedings that depart from the normal kind of such actions. In our opinion, the amount of ultimate liability with respect to all actions will not materially affect our consolidated results of operations or financial condition.

Properties

The following table sets forth the number of restaurant/entertainment complexes which we currently operate in each state/country. Unless otherwise indicated, each of the complexes listed below is leased.

State or country	Number of complexes
Arizona	1
California	6
Colorado	2
Florida(a)(b)	3
Georgia(c)	3
Hawaii	1
Illinois(a)	2
Kansas	1
Maryland	2
Michigan	1
Missouri	1
Nebraska	1
New York	6
North Carolina	1
Ohio(a)(b)	3
Pennsylvania	3
Rhode Island	1
Tennessee	1
Texas(a)	7
Toronto, Canada	1
TOTAL	47

(a) One complex in the state is owned.

(b) In each of Florida and Ohio, we own the building and improvements of one complex, and we lease the underlying land.

(c) Includes one Jillian's complex that we operate under the terms of a limited partnership agreement.

We also lease a 47,000 square foot office building and 30,000 square foot warehouse facility in Dallas, Texas, for use as our corporate headquarters and distribution center. This lease expires in October 2021, with options to renew until October 2041. We also lease a 22,900 square foot warehouse facility in Dallas, Texas, for use as additional warehouse space. This lease expires in January 2009.

MANAGEMENT

Directors and executive officers

Each of our directors and officers holds office until a successor is elected or qualified or until his earlier death, resignation or removal. Pursuant to a shareholders agreement, Wellspring has the right to designate all but one of our directors, and HBK has the right to designate, at its option, one observer or one director, in each case reasonably acceptable to Wellspring, to observe or serve, as applicable, on our board of directors for so long as HBK owns 50% of the common stock of WS Midway Holdings, Inc. to which it initially subscribed. In addition, Wellspring and HBK have the right to remove any or all of the directors that they appointed. See "Certain relationships and transactions—Shareholders agreement."

Set forth below is biographical information regarding our directors and executive officers:

James W. Corley, 55, a co-founder of the Dave & Buster's concept in 1982, has served as our Chief Executive Officer since April 2003, as our Chief Operating Officer since June 1995 and as director since May 1995. He previously served as Co-Chief Executive Officer and as Co-Chairman of the Board from February 1996 to April 2003. 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 our business.

David O. Corriveau, 54, a co-founder of the Dave & Buster's concept in 1982, has served as our President since June 1995 and as a director since May 1995. He previously served as Co-Chief Executive Officer and as Co-Chairman of the Board from February 1996 to April 2003. Mr. Corriveau served as President and Chief Executive Officer of D&B Holding (a predecessor of ours) from 1989 through June 1995. From 1982 to 1989, Messrs. Corriveau and Corley operated our business. Mr. Corriveau is currently on a sabbatical from his full-time duties until March 2007.

Stephen M. King, 48, has served as Senior Vice President and Chief Financial Officer since March 2006. From 1984 to 2006, he served in various capacities for Carlson Restaurants Worldwide, including Chief Financial Officer, Chief Administrative Officer, Chief Operating Officer and most recently as President and Chief Operating Officer of International.

Starlette Johnson, 43, has served as Senior Vice President and Chief Administrative Officer since June 2006. From 2004 to June 2006, she was an independent consultant to restaurant, retail and retail services companies. From 1995 to 2004, she served in various capacities (most recently as Executive Vice President and Chief Strategic Officer) of Brinker International, Inc.

Maria M. Miller, 49, has served as Senior Vice President—Marketing since May 2003. From 2000 to 2003, she was principal and co-founder of a marketing consulting firm and engaged with an internet start-up company.

J. Michael Plunkett, 55, has served as Senior Vice President—Food, Beverage and Purchasing/Operations Strategy since June 2003. Previously, he served as Senior Vice President of Operations for Jillian's from June 2004 to January 2006, as Vice President of Kitchen Operations from November 2000 to June 2003, 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 us and our predecessors.

Sterling R. Smith, 53, has served as Senior Vice President—Operations since December 2002. Previously, he served as Vice President of Operations from June 1995 to December 2002 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 us and our predecessors. Mr. Smith is currently on a sabbatical from his full-time duties until February 2007.

Jay L. Tobin, 48, has served as Senior Vice President and General Counsel since May 2006. From 1988 to 2005, he served in various capacities (most recently as Senior Vice President and Deputy General Counsel) of Brinker International, Inc.

Jeffrey C. Wood, 44, has served as Senior Vice President and Chief Development Officer since June 2006. Mr. Wood previously served as Vice President of Restaurant Leasing for Simon Property Group from April 2005 until June 2006 and in various capacities (including Vice President of Development and Emerging Concepts and Vice President of Real Estate and Property Development) with Brinker International from 1993 until November 2004.

Michael J. Metzinger, 49, has served as Vice President—Accounting and Controller since January 2005. Prior to joining us, he served in various capacities (most recently as Executive Director—Financial Reporting) with Carlson Restaurants Worldwide, Inc.

Greg S. Feldman, 49, became a Director upon consummation of the Merger in March 2006. Mr. Feldman is a Managing Partner of Wellspring, which he co-founded in January 1995.

Jason B. Fortin, 35, became a Director upon consummation of the Merger. Mr. Fortin is a Partner at Wellspring, which he joined in 1995.

Carl M. Stanton, 38, became a Director upon consummation of the Merger. Mr. Stanton is a Partner at Wellspring, which he joined in 1998.

Executive Compensation

The following table sets forth information concerning all compensation paid or accrued by the Company during fiscal 2003, 2004 and 2005 to or for the Company's Chief Executive Officer and the four other highest compensated executive officers of the Company (collectively the "Named Executive Officers").

		Annual Compensation(1)		Long Term Compensation		
Name and Principal Position	Year	Salary ($)	Bonus ($)	Restricted Stock Awards ($)(2)	Securities Underlying Options/SARs (#)(3)	All Other Compensation($)(4)
James W. Corley	2005	$ 531,154	$ 100,000	$ 566,400	—	—
(CEO & COO)	2004	$ 480,000	$ 280,000	$ 176,600	40,000	—
	2003	$ 482,308	$ 372,400	—	—	—
David O. Corriveau	2005	$ 531,154	$ 50,000	$ 566,400	—	—
(President)	2004	$ 480,000	$ 280,000	$ 176,600	40,000	—
	2003	$ 482,308	$ 372,400	—	—	—
William C. Hammett, Jr.	2005	$ 283,269	—	$ 283,200	—	—
(Senior Vice President and Chief	2004	$ 260,962	$ 115,000	$ 132,450	—	—
Financial Officer)(5)	2003	$ 247,663	$ 114,000	—	—	—
Sterling R. Smith	2005	$ 230,115	$ 30,000	$ 141,600	—	$ 7,931
(Senior Vice President, Operations)	2004	$ 224,089	$ 88,000	$ 132,450	—	$ 7,748
	2003	$ 216,945	$ 79,000	—	—	$ 7,471
J. Michael Plunkett	2005	$ 219,716	$ 27,500	$ 188,800	—	$ 8,988
(Senior Vice President Food, Beverage	2004	$ 194,615	$ 85,000	$ 132,450	—	$ 6,042
and Purchasing/Operations Strategy)	2003	$ 173,700	$ 68,000	$ —	—	$ 2,006

(1) The value of perquisites and other personal benefits is not reported as such amounts do not exceed the lesser of $50,000 or 10% of the total annual salary and bonus reported for any of the Named Executive Officers.

(2) Upon consummation of the Merger, all of the restricted stock that had been granted to employees was vested, all restrictions on those shares immediately lapsed, and the holders of those shares of previously restricted stock became entitled to receive the merger consideration of $18.05 less any applicable withholding taxes, for each share of previously restricted stock.

(3) Upon consummation of the Merger, each outstanding option to purchase our common stock, whether or not vested, was cancelled in exchange for the right to receive, for each share subject to such option, a cash payment equal to the amount by which the $18.05 per share merger consideration exceeded the per share exercise price of the option, without interest, less any applicable withholding taxes.

(4) Includes matching contributions to the Company's 401(k) and Select Executive Retirement Plan.

(5) Mr. Hammett resigned as an officer of the Company in March 2006 following the consummation of the Merger and received the payment described below in "—Change-in-control agreements and employment contracts."

Compensation of directors

The members of our board of directors are not separately compensated for their services as directors, other than reimbursement for out-of-pocket expenses incurred in connection with rendering such services.

Change-in-control agreements and employment contracts

In 2000, we entered into executive retention agreements with each of Messrs. Corriveau and Corley. In 2001 and 2002, we entered into executive retention agreements with our remaining executive officers, including the named executive officers. Our executive officers hired subsequent to 2002 are not parties to executive retention agreements.

The executive retention agreements provide that, for the two-year period following stockholder approval of the Merger (or one year in the case of Messrs. Corriveau and Corley), which we refer to as the "employment period," the executive officer will remain our employee. During the employment period, (i) the executive officer's position, authority, duties and responsibilities must be consistent in all material respects with the most significant of those held, exercised or assigned during the 90-day period before stockholder approval of the Merger; (ii) the executive officer must be employed at the location where the executive officer was employed immediately before stockholder approval of the Merger (or any other location that becomes our headquarters and that is not more than 25 miles distant from such prior location); (iii) the executive officer will receive an annual base salary at least equal to 12 times the highest monthly base salary paid or payable by us to the executive officer during the 12-month period immediately preceding the month in which stockholder approval of the Merger occurs; (iv) the executive officer will be awarded an annual bonus, for each fiscal year ending during the employment period, equal to the greater of (A) the maximum bonus that the executive officer could have received pursuant to the annual incentive plan in effect 90 days before stockholder approval of the Merger or (B) 60% of the executive officer's annual base salary (the greater amount being referred to below as the "annual bonus"); and (v) the executive officer will be entitled to additional compensation and benefits, including participation in incentive, savings, and retirement plans, health and other welfare benefits plans, and fringe benefits, on a basis that is no less favorable than that in effect during the 90-day period preceding stockholder approval of the Merger (or, if more favorable, then the basis on which such compensation and benefits is made available to other of our peer executives and to other peer executives of our affiliated companies after stockholder approval of the Merger).

During the employment period, if the executive officer's employment is terminated by us without cause or by the executive officer for good reason (as such terms are defined in the executive retention agreements), the executive officer will be entitled to (i) a lump-sum cash payment in respect of a bonus, for the fiscal year in which employment is terminated, equal to the annual bonus, pro-rated for the portion of the fiscal year during which the executive officer was employed; (ii) a lump-sum cash severance payment equal to two times the sum of the executive officer's annual base salary and annual bonus; and (iii) continued savings and retirement plans, health and other welfare benefits plans, and fringe benefits for the remainder of the employment period plus two additional years. In addition, in recognition of the special value of their services during the period following the Merger, each of Messrs. Corriveau and Corley is entitled to a special payment equal to the sum of his respective annual base salary and annual bonus if he remains employed for the entirety of the one-year period beginning upon stockholder approval of the Merger.

The executive retention agreements also provide that if any payments or benefits to be provided to an executive officer (whether pursuant to the executive retention agreement or otherwise) would subject the executive officer to an excise tax under Section 4999 of the Code (i.e., the "golden parachute" provisions), then the total amount of such payments and benefits will be reduced to the minimum extent necessary to cause the executive officer not to be subject to such excise tax, but only if

the executive officer would retain more, on an after-tax basis, than if such a reduction were not effected and an excise tax had been paid.

The following table sets forth the cash severance payments (i.e., the pro rata bonus and severance payments described above) which D&B owes to each named executive officer and all D&B executive officers as a group if, as of April 30, 2006, their employment was terminated by D&B without cause or by the executive officer with good reason:

Name		
James W. Corley	$	4,478,658
David O. Corriveau		4,443,090
William C. Hammett, Jr.(1)		1,383,260
Sterling R. Smith		983,561
J. Michael Plunkett		980,439
All executive officers as a group (11 persons)	$	14,187,643

(1) Mr. Hammett left the Company in March 2006 following the consummation of the Merger and received the cash severance payments to which he was entitled under the executive retention agreement.

We also entered into separate employment agreements with each of Messrs. Corriveau and Corley effective as of April 3, 2000. During the 1-year employment period applicable to Messrs. Corriveau and Corley under their respective executive retention agreements, the operation of these employment agreements generally is suspended, and our rights and obligations and the rights and obligations of Messrs. Corriveau and Corley (including, without limitation, severance rights and obligations) are instead determined under their respective executive retention agreements. If Messrs. Corriveau and Corley remain employed after the expiration of the 1-year employment period applicable under their respective executive retention agreements, their respective employment agreements will continue in effect thereafter in accordance with their applicable terms.

We created an executive retention agreement trust with Wachovia Bank, National Association, in December 2002. The executive retention agreement trust serves as a grantor trust, which is commonly referred to as a "rabbi trust," and is intended to help enable us to meet our obligations under the executive retention agreements with our executive officers and certain of our other employees. The executive retention agreement trust would have required us, upon stockholder approval of the Merger, to fund the executive retention agreement trust with an amount sufficient to pay each executive officer the benefits to which he or she would be entitled under his or her respective executive retention agreement, plus an expense reserve (to the extent not already contributed) that is equal to $75,000, or if greater, the estimated trustee and record-keeper expenses and fees for one year and legal fees. However, on December 7, 2005, the executive retention agreement trust was amended so that upon stockholder approval of the Merger, we were only required to fund the executive retention agreement trust with an amount equal to the applicable expense reserve and, when executive officers (or other employees) become entitled to cash severance payments under their respective executive retention agreements, to fund the executive retention agreement trust with the amount of the cash severance payments, unless we pay those cash severance amounts directly.

PRINCIPAL STOCKHOLDERS

Our sole stockholder is WS Midway Holdings, Inc. Wellspring Capital Partners III, L.P., an affiliate of Wellspring, owns approximately 82% of the outstanding common stock of WS Midway Holdings, Inc., and HBK Main Street Investments L.P., an affiliate of HBK, owns approximately 18% of the outstanding common stock of WS Midway Holdings, Inc.

CERTAIN RELATIONSHIPS AND TRANSACTIONS

Shareholders agreement

We are a direct, wholly-owned subsidiary of WS Midway Holdings, Inc. Affiliates of Wellspring and HBK control approximately 82% and 18%, respectively, of the outstanding capital stock of WS Midway Holdings, Inc. Wellspring and HBK have entered into a shareholders agreement with WS Midway Holdings, Inc. pursuant to which HBK will be entitled to designate at its option one observer or one director, in each case reasonably acceptable to Wellspring, to observe or serve, as applicable, on our board of directors for so long as HBK owns 50% of the common stock of WS Midway Holdings, Inc. to which it initially subscribed. In addition, HBK may not, without the prior written consent of Wellspring, transfer or pledge any of its shares of common stock other than to certain permitted transferees.

Registration rights agreement

Wellspring and HBK have entered into a registration rights agreement with WS Midway Holdings, Inc. pursuant to which HBK will have customary tag-along and drag-along rights in connection with any transfers by Wellspring of any of its shares of our common stock. As part of the registration rights agreement, Wellspring receives customary demand registration rights. HBK is also entitled to customary piggyback registration rights in the event that WS Midway Holdings, Inc. registers its common stock with the SEC in connection with a public offering.

Expense reimbursement agreement

We have entered into an expense reimbursement agreement with an affiliate of Wellspring, pursuant to which the Wellspring affiliate provides general advice to us in connection with our long-term strategic plans, financial management, strategic transactions and other business matters. The expense reimbursement agreement provides for an annual expense reimbursement of up to $750,000 to the Wellspring affiliate. The initial term of the expense reimbursement agreement will expire in March 2011, and after that date such agreement will renew automatically on a year-to-year basis unless one party gives at least 30 days' prior notice of its intention not to renew.

DESCRIPTION OF OTHER INDEBTEDNESS

The following is a summary of our material indebtedness, other than the Exchange Notes. We emphasize that this summary is not a complete description of all of the terms and conditions of such indebtedness, and it is qualified in its entirety by reference to the documents noted below and all other documents setting forth the terms and conditions of such indebtedness.

Our senior secured credit facility

General

In connection with the Transactions, we entered into a senior secured credit agreement with a syndicate of financial institutions and institutional lenders. Set forth below is a summary of the terms of our senior secured credit facility.

Our senior secured credit facility provides for senior secured financing of up to $160.0 million consisting of:

- a $100.0 million term loan facility with a maturity of seven years from March 8, 2006, the closing date of the Transactions (with up to $50.0 million of the term loan facility available on a delayed-draw basis for a period of six months); and

- a $60.0 million revolving credit facility, including a $5.0 million revolving credit sub-facility to the Canadian subsidiary of Dave & Buster's (which may be borrowed in the Canadian dollar-equivalent of such amount), a letter of credit sub-facility of $20.0 million and a swingline sub-facility of $5.0 million, with a maturity of five years from March 8, 2006, the closing date of the Transactions.

All borrowings under our senior secured credit facility are subject to the satisfaction of customary conditions, including absence of a default and accuracy of representations and warranties.

Interest and fees

The interest rates per annum applicable to loans, other than swingline loans, under our senior secured credit facility are, at our option, equal to either a base rate (or, in the case of the Canadian revolving credit facility, a Canadian prime rate) or a Eurodollar rate (or, in the case of the Canadian revolving credit facility, a Canadian cost of funds rate) for one-, two-, three or six-month (or, in the case of the Canadian revolving credit facility, 30, 60, 90 or 180-day) interest periods chosen by us, in each case, plus an applicable margin percentage. Swingline loans bear interest at the base rate plus the applicable margin.

The base rate is the greatest of: (i) the JPMorgan Chase Bank, N.A. prime rate; (ii) the secondary market rate for three month certificates of deposit (adjusted for statutory reserve requirements) plus 100 basis points; and (iii) 50 basis points over the weighted average of rates on overnight federal funds as published by the Federal Reserve Bank of New York. The Eurodollar rate is determined by reference to settlement rates established for deposits in dollars in the London interbank market for a period equal to the interest period of the loan and the maximum reserve percentages established by the Board of Governors of the United States Federal Reserve to which our lenders are subject.

The Canadian prime rate is the greater of: (i) the JPMorgan Chase Bank, N.A., Toronto Branch prime rate C$denominated commercial loans to borrowers in Canada and (ii) the sum of (A) the CDOR rate and (B) 1% per annum. The Canadian cost of funds is the fixed rate of interest determined by JPMorgan Chase Bank, N.A., Toronto Branch as being sufficient to compensate JPMorgan Chase Bank, N.A., Toronto Branch for its cost of funds for funding a Canadian cost of funds loan.

The applicable margin with respect to loans under the revolving credit facility is a percentage per annum equal to (i) 1.75% for base rate loans and Canadian prime rate loans and (ii) 2.75% for Eurodollar loans and Canadian cost of funds loans. The applicable margin with respect to loans under the term loan facility is a percentage per annum equal to (i) 1.50% for base rate loans and (ii) 2.50% for Eurodollar loans and will be subject to adjustment based on performance goals.

On the last day of each calendar quarter we are required to pay each lender a commitment fee in respect to any unused commitments under the revolving credit facilities or the term loan facility.

Prepayments

Subject to exceptions, our senior secured credit facility requires mandatory prepayments of the term loan based on certain percentages of excess cash flows and net cash proceeds from asset sales and recovery events or the issuance of certain debt securities.

Amortization of principal

Our senior secured credit facility requires scheduled quarterly payments of principal on the term loan at the end of each of our fiscal quarters beginning June 2006 in aggregate annual amounts equal to 1% of the original aggregate principal amount of the term loan with the balance payable ratably over the final four quarters.

Collateral and guarantors

Indebtedness under our senior secured credit facility is guaranteed by WS Midway Holdings, Inc., by all of our current and future domestic subsidiaries (with certain agreed-upon exceptions), and by us with respect to the obligations of the Canadian subsidiary. Indebtedness under our senior secured credit facility is also secured by a first priority security interest in substantially all of our, WS Midway Holdings, Inc.'s and the guarantor subsidiaries' existing and future property and assets (subject to exceptions to be agreed upon), including accounts receivable, inventory, equipment, general intangibles, intellectual property, investment property and other personal property and a first priority pledge of our capital stock and the capital stock of the guarantor subsidiaries and of 66% of the voting capital stock of our first-tier foreign subsidiaries.

Restrictive covenants and other matters

Our senior secured credit facility requires that we comply with the following financial covenants: a minimum fixed charge coverage ratio test and a maximum leverage ratio test. We are required to maintain a minimum fixed charge coverage ratio of 1.00:1.00 and a maximum leverage ratio of 4.75:1.00 as of the end of each fiscal quarter, which will become more restrictive over time (such ratios will be defined in our senior secured credit facility). In addition, our senior secured credit facility includes negative covenants restricting or limiting our, WS Midway Holdings, Inc.'s and our subsidiaries' ability to, among other things:

- incur, assume or permit to exist additional indebtedness or guarantees;
- incur liens and engage in sale-leaseback transactions;
- make loans and investments;
- make capital expenditures;
- declare dividends, make payments on or redeem or repurchase capital stock;
- engage in mergers, acquisitions and other business combinations;
- prepay, redeem or purchase certain indebtedness;

- amend or otherwise alter terms of our material indebtedness and other material agreements;
- sell assets;
- transact with affiliates; and
- alter the business that we conduct.

Such negative covenants are subject to certain exceptions.

Our senior secured credit facility contains certain customary representations and warranties, affirmative covenants and events of default, including payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults and cross-acceleration to certain indebtedness, certain events of bankruptcy, certain events under ERISA, material judgments, actual or asserted failures of any guarantee or security document supporting our senior secured credit facility to be in full force and effect and a change of control. If an event of default occurs, the lenders under our senior secured credit facility would be entitled to take various actions, including acceleration of amounts due under our senior secured credit facility and all actions permitted to be taken by a secured creditor.

Interest swap agreements

Effective June 30, 2006 we entered into two interest rate swap agreements that expire in 2011, to change a portion of our variable rate debt to fixed rate debt. Pursuant to the swap agreements, the interest rate on national amounts aggregating $47.4 million at June 30, 2006 is fixed at 5.31 percent. The agreements provide for an increase in the notional amounts to $94.6 million and retention of the 5.31 percent fixed rate at September 30, 2006. The agreements have not been designated as hedges and, accordingly, adjustments required to mark the instruments to their fair value will be recorded as interest expense.

THE EXCHANGE OFFER

Purpose of the exchange offer

When we sold the Restricted Notes on March 8, 2006, we and our guarantors entered into a registration rights agreement with the initial purchaser of those Restricted Notes.

Under the registration rights agreement, we and the guarantors agreed for the benefit of the holders of the Restricted Notes that we will use our reasonable best efforts to file with the SEC and cause to become effective a registration statement relating to an offer to exchange the Restricted Notes for an issue of SEC-registered Exchange Notes with the terms identical to the Restricted Notes (except that the Exchange Notes will not be subject to restrictions on transfer or to any increase in annual interest rate as described below).

Pursuant to the registration rights agreement, we and our guarantors agreed, for the benefit of the holders of the Restricted Notes, to:

- use our reasonable best efforts to file with the SEC and cause to become effective a registration statement relating to an offer to exchange the Restricted Notes for the Exchange Notes with the terms identical terms to the Restricted Notes (except that the Exchange Notes will not be subject to restrictions on transfer or to any increase in annual interest rate as described below);

- use our reasonable best efforts to cause the exchange offer registration statement to be declared effective within 180 days of the closing of the offering of the Restricted Notes and to remain effective until the consummation of the exchange offer; and

- use our reasonable best efforts to cause the exchange offer to be consummated within 210 days of the closing of the offering of the Restricted Notes.

We also agreed to file a shelf registration statement under certain circumstances. If we fail to satisfy these obligations, we have agreed to pay additional interest to the holders of the Restricted Notes under certain circumstances. See "Description of the Exchange Notes—Registration rights."

The exchange offer is not being made to holders of Restricted Notes in any jurisdiction in which the exchange would not comply with the securities or blue sky laws of such jurisdiction. A copy of the registration rights agreement is incorporated by reference as an exhibit to the registration statement of which this prospectus is a part.

Terms of the exchange offer

Subject to the terms and the satisfaction or waiver of the conditions detailed in this prospectus, we will accept for exchange Restricted Notes which are properly tendered on or prior to the expiration date and not withdrawn as permitted below. As used herein, the term "expiration date" means 5:00 p.m., New York City time, on , 2006. We may, however, in our sole discretion, extend the period of time during which the exchange offer is open. The term "expiration date" means the latest time and date to which the exchange offer is extended.

As of the date of this prospectus, $175,000,000 aggregate principal amount of Restricted Notes are outstanding. This prospectus is first being sent on or about the date hereof, to all holders of Restricted Notes known to us.

We expressly reserve the right, at any time prior to the expiration of the exchange offer, to extend the period of time during which the exchange offer is open, and delay acceptance for exchange of any Restricted Notes, by giving oral or written notice of such extension to holders as described below. During any such extension, all Restricted Notes previously tendered will remain subject to the exchange offer and may be accepted for exchange by us. Any Restricted Notes not accepted for exchange for any

reason will be returned without expense to an account maintained with DTC as promptly as practicable after the expiration or termination of the exchange offer.

Restricted Notes tendered in the exchange offer must be in denominations of principal amount of $1,000 and any integral multiple thereof.

We expressly reserve the right to amend or terminate the exchange offer, and not to accept for exchange any Restricted Notes, upon the occurrence of any of the conditions of the exchange offer specified under "—Conditions to the exchange offer." In the event of a material change in the exchange offer, including the waiver of a material condition, we will extend the exchange offer period if necessary to ensure that at least five business days remain in the exchange offer following notice of the material announcement. We will give oral or written notice of any extension, amendment, non-acceptance or termination to the holders of the Restricted Notes as promptly as practicable. Such notice, in the case of any extension, will be issued by means of a press release or other public announcement no later than 9:00 a.m., New York City time, on the next business day after the previously scheduled expiration date.

Procedures for tendering Restricted Notes

When a holder of Restricted Notes tenders, and we accept, Restricted Notes for exchange, a binding agreement between us and the tendering holder is created, subject to the terms and conditions described in this prospectus and the letter of transmittal.

Valid Tender. Except as set forth below, a holder of Restricted Notes who wishes to tender notes for exchange must, on or prior to the expiration date:

- transmit a properly completed and duly executed letter of transmittal, including all other documents required by the letter of transmittal, to the exchange agent at the address set forth under the caption "—Exchange Agent;" or

- if notes are tendered pursuant to the book-entry procedures set forth below, the tendering holder must transmit an agent's message to the exchange agent at the address set forth under the caption "—Exchange Agent."

In addition, either:

- the exchange agent must receive the certificates for the Restricted Notes and the letter of transmittal;

- the exchange agent must receive, prior to the expiration date, a timely confirmation of the book-entry transfer of the notes being tendered into the exchange agent's account at DTC, along with the letter of transmittal or an agent's message; or

- the holder must comply with the guaranteed delivery procedures described below.

The term "agent's message" means a message, transmitted by DTC and received by the exchange agent and forming a part of a book-entry confirmation, which states that DTC has received an express acknowledgment from the tendering holder that the tendering holder has received and agrees to be bound by the letter of transmittal and that we may enforce the letter of transmittal against that holder. In this prospectus, the term "book-entry confirmation" means a timely confirmation of a book-entry transfer of Restricted Notes into the exchange agent's account at DTC. Restricted Notes may be tendered in whole or in part in integral multiples of $1,000 principal amount.

If less than all of the Restricted Notes are tendered, a tendering holder should fill in the principal amount of Restricted Notes being tendered in the appropriate box on the letter of transmittal. The entire amount of Restricted Notes delivered to an exchange agent will be deemed to have been tendered unless otherwise indicated.

If any letter of transmittal, endorsement, bond power, power of attorney or any other document required by the letter of transmittal is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or other person acting in a fiduciary or representative capacity, that person should so indicate when signing and must submit proper evidence satisfactory to us, in our reasonable judgment, of the person's authority to act.

Any beneficial owner of Restricted Notes that are held by or registered in the name of a broker, dealer, commercial bank, trust company or other nominee or custodian is urged to contact that entity promptly if the beneficial owner wishes to participate in the exchange offer.

The method of delivery of Restricted Notes, the letter of transmittal and all other required documents is at the option and sole risk of the tendering holder, and delivery will be deemed made only when actually received by the exchange agent. Instead of delivery by mail, we recommend that holders use an overnight or hand delivery service. In all cases, holders should allow sufficient time to assure timely delivery to the exchange agent and should obtain proper insurance. No letter of transmittal or Restricted Notes should be sent to us. Holders may request their respective brokers, dealers, commercial banks, trust companies or nominees to effect these transactions for them. We will not accept any alternative conditional or contingent tenders. Each tendering holder, by execution of the letter of transmittal, waives any right to receive any notice of the acceptance of such tender.

Each broker-dealer that receives Exchange Notes for its own account in exchange for Restricted Notes, where the Restricted Notes were acquired by the broker-dealer as a result of market-making or other trading activities, must acknowledge that it will deliver a prospectus in connection with any resale of the Exchange Notes. See "Plan of Distribution."

Book-Entry Transfer. The exchange agent will make a request to establish an account at DTC with respect to Restricted Notes for purposes of the exchange offer within two business days after the date of this prospectus. Subject to the establishment of such accounts, any financial institution that is a participant in DTC's book-entry transfer facility system may make a book-entry delivery of Restricted Notes by causing DTC to transfer those Restricted Notes into the exchange agent's account at DTC in accordance with DTC's procedures for transfers. The exchange agent and DTC have confirmed that the exchange offer is eligible for the DTC Automated Tender Offer Program, referred to in this prospectus as "ATOP." Accordingly, holders of Restricted Notes may tender their Restricted Notes by book-entry transfer by crediting the Restricted Notes to the exchange agent's account at DTC in accordance with ATOP and by complying with applicable ATOP procedures with respect to the exchange offer. DTC participants that are accepting the exchange offer should transmit their acceptance to DTC, which will edit and verify the acceptance and execute a book-entry delivery to the exchange agent's account at DTC. DTC will then send an agent's message to the exchange agent for its acceptance in which the holder of the Restricted Notes acknowledges and agrees to be bound by the terms of, and makes the representations and warranties contained in, the letter of transmittal. Delivery of the agent's message by DTC will satisfy the terms of the exchange offer as to execution and delivery of a letter of transmittal by the participant identified in the agent's message.

Delivery of notes issued in the exchange offer may be effected through book-entry transfer at DTC. However, the letter of transmittal or facsimile thereof or an agent's message, with any required signature guarantees and any other required documents, must:

- be transmitted to and received by the exchange agent at the address set forth under the caption "—Exchange Agent;" or
- comply with the guaranteed delivery procedures described below.

Delivery of documents to DTC does not constitute delivery to the exchange agent.

Signature Guarantees. Tendering holders do not need to endorse their certificates for Restricted Notes and signature guarantees on a letter of transmittal or a notice of withdrawal, as the case may be, are unnecessary unless:

- a certificate for Restricted Notes is registered in a name other than that of the person surrendering the certificate, or
- a registered holder completes the box entitled "Special Issuance Instructions" or "Special Delivery Instructions" in the letter of transmittal.

In either of these cases, the certificates for Restricted Notes must be duly endorsed or accompanied by a properly executed bond power, with the endorsement or signature on the bond power and on the letter of transmittal or the notice of withdrawal, as the case may be, guaranteed by a firm or other entity identified in Rule 17Ad-15 under the Exchange Act as an "eligible guarantor institution," referred to in this prospectus as an "eligible institution," including, as such terms are defined in that rule:

- a bank;
- a broker, dealer, municipal securities broker or dealer or governmental securities broker or dealer;
- a credit union;
- a national securities exchange, registered securities association or clearing agency; or
- a savings association,

unless surrendered on behalf of such eligible institution. Please read carefully Instruction 1 in the letter of transmittal.

Guaranteed Delivery. If a holder desires to tender Restricted Notes in the exchange offer and the certificates for the Restricted Notes are not immediately available or time will not permit all required documents to reach the exchange agent before the expiration date, or the procedures for book-entry transfer cannot be completed on a timely basis, the Restricted Notes may nevertheless be tendered, provided that all of the following guaranteed delivery procedures are complied with:

- the tenders are made by or through an eligible institution;
- before the expiration date, the exchange agent receives from the eligible institution a properly completed and duly executed Notice of Guaranteed Delivery, substantially in the form accompanying the letter of transmittal, stating the name and address of the holder of Restricted Notes and the amount of Restricted Notes tendered, stating that the tender is being made by the notice and guaranteeing that within three New York Stock Exchange trading days after the date of execution of the notice of guaranteed delivery, the certificates for all physically tendered Restricted Notes, in proper form for transfer, or a book-entry confirmation, as the case may be, and any other documents required by the letter of transmittal will be deposited by the eligible institution with the exchange agent. The Notice of Guaranteed Delivery may be delivered by hand, or transmitted by facsimile or mail to the exchange agent and must include a guarantee by an eligible institution in the form set forth in the Notice of Guaranteed Delivery; and
- the certificates (or book-entry confirmation) representing all tendered Restricted Notes, in proper form for transfer, together with a properly completed and duly executed letter of transmittal, with any required signature guarantees and any other documents required by the letter of transmittal, are received by the exchange agent within three New York Stock Exchange trading days after the date of execution of the Notice of Guaranteed Delivery.

Determination of Validity. All questions as to the form of documents, validity, eligibility, including time of receipt, and acceptance for exchange of any tendered Restricted Notes will be determined by us, in our reasonable judgment, and that determination will be final and binding on all parties. We reserve the right, in our reasonable judgment, to reject any and all tenders that we determine are not in proper form or the acceptance for exchange of which may, in the view of our counsel, be unlawful. We also reserve the right, subject to applicable law, to waive any of the conditions of the exchange offer as set forth under the caption "—Conditions to the Exchange Offer" or any defect or irregularity in any tender of Restricted Notes of any particular holder whether or not we waive similar defects or irregularities in the case of other holders.

Our interpretation of the terms and conditions of the exchange offer, including the letter of transmittal and its instructions, will be final and binding on all parties. No tender of Restricted Notes will be deemed to have been validly made until all defects or irregularities with respect to such tender have been cured or waived. Neither we, any of our affiliates or assigns, the exchange agent or any other person will be under any duty to give any notification of any defects or irregularities in tenders or incur any liability for failure to give any such notification.

Acceptance of Restricted Notes for exchange; delivery of the Exchange Notes

Upon satisfaction or waiver of all of the conditions to the exchange offer, we will accept, promptly after the expiration date, all Restricted Notes properly tendered and will issue the Exchange Notes promptly after acceptance of the Restricted Notes. See "—Conditions to the exchange offer." For purposes of the exchange offer, we will be deemed to have accepted properly tendered Restricted Notes for exchange if and when we give oral (confirmed in writing) or written notice to the exchange agent.

The holder of each Restricted Note accepted for exchange will receive an Exchange Note in the amount equal to the surrendered Restricted Note. Holders of the Exchange Notes on the relevant record date for the first interest payment date following the consummation of the exchange offer will receive interest accruing from the most recent date to which interest has been paid on the Restricted Notes. Holders of the Exchange Notes will not receive any payment in respect of accrued interest on Restricted Notes otherwise payable on any interest payment date, the record date for which occurs on or after the consummation of the exchange offer.

If any tendered Restricted Notes are not accepted for any reason set forth in the terms and conditions of the exchange offer or if Restricted Notes are submitted for a greater principal amount than the holder desires to exchange, such unaccepted or [non exchanged] Restricted Notes will be returned without expense to an account maintained with DTC promptly after the expiration or termination of the exchange offer.

Withdrawal rights

Except as otherwise provided in this prospectus, tenders of Restricted Notes may be withdrawn at any time before the expiration date.

For a withdrawal of a tender of Restricted Notes to be effective, the exchange agent must receive a valid withdrawal request through the Automated Tender Offer Program system from the tendering DTC participant before the expiration date. Any such request for withdrawal must include the VOI number of the tender to be withdrawn and the name of the ultimate beneficial owner of the related Restricted Notes in order that such bonds may be withdrawn. Properly withdrawn Restricted Notes may be re-tendered by following the procedures described under "—Procedures for tendering Restricted Notes" above at any time on or before 5:00 p.m., New York City time, on the expiration date.

If certificates for Restricted Notes have been delivered or otherwise identified to the exchange agent, the notice of withdrawal must specify the serial numbers on the particular certificates for the Restricted Notes to be withdrawn and the signature on the notice of withdrawal must be guaranteed by an eligible institution, except in the case of Restricted Notes tendered for the account of an eligible institution.

We will determine all questions as to the validity, form and eligibility, including time of receipt, of notices of withdrawal. Neither we, any of our affiliates or assigns, the exchange agent or any other person shall be under any duty to give any notification of any defects or irregularities in any notice of withdrawal or incur any liability for failure to give any notification. Any Restricted Notes so withdrawn will be deemed not to have been validly tendered for exchange. No Exchange Notes will be issued unless the Restricted Notes so withdrawn are validly re-tendered.

Conditions to the exchange offer

Notwithstanding any other provision of the exchange offer, we are not required to accept for exchange, or to issue the Exchange Notes in exchange for, any Restricted Notes and may terminate or amend the exchange offer, if prior to the expiration date, the exchange offer violates any applicable law or applicable interpretation of the staff of the SEC.

The foregoing condition is for our sole benefit and may be asserted by us regardless of the circumstances giving rise to any condition or may be waived by us in whole or in part at any time in our reasonable discretion, except that we will not waive the condition with respect to an individual holder unless we waive such condition with respect to all holders. Our failure at any time to exercise any of the foregoing rights will not be deemed a waiver of any such right, and each such right will be deemed an ongoing right which may be asserted at any time and from time to time prior to the expiration of the exchange offer. The condition to the exchange offer must be satisfied or waived by us prior to the expiration of the exchange offer.

In addition, we will not accept for exchange any Restricted Notes tendered, and no Exchange Notes will be issued in exchange for any such Restricted Notes, if at such time any stop order is threatened or in effect with respect to the Registration Statement, of which this prospectus constitutes a part, or the qualification of the indentures under the Trust Indenture Act.

Exchange agent

We have appointed The Bank of New York Trust Company, N.A., as the exchange agent for the exchange offer. Questions and requests for assistance, requests for additional copies of this prospectus or of other documents should be directed to the exchange agent addressed as follows:

The Bank of New York Trust Company, N.A., Exchange Agent

The Bank of New York Trust Company, N.A.
101 Barclay Street, 7 East
New York, New York 10286
Attention: Corporate Trust Operations

For Facsimile Transmission:

212-298-1915

To Confirm by Telephone or
For Information Call:

212-815-3738

Fees and expenses

The principal solicitation is being made by mail by The Bank of New York Trust Company, N.A., as exchange agent. We will pay the exchange agent customary fees for its services, reimburse the exchange agent for its reasonable out-of-pocket expenses incurred in connection with the provision of these services and pay other registration expenses, including registration and filing fees, fees and expenses of compliance with federal securities and state blue sky securities laws, printing expenses, messenger and delivery services and telephone, fees and disbursements to our counsel, application and filing fees and any fees and disbursement to our independent certified public accountants. We will not make any payment to brokers, dealers or others soliciting acceptances of the exchange offer.

Additional solicitation may be made by telephone, facsimile or in person by our and our affiliates' officers and regular employees and by persons so engaged by the exchange agent.

Accounting treatment

We will record the Exchange Notes at the same carrying value as the Restricted Notes, as reflected in our accounting records on the date of the exchange. Accordingly, we will not recognize any gain or loss for accounting purposes. The expenses of the exchange offer will be amortized over the term of the Exchange Notes.

Transfer taxes

You will not be obligated to pay any transfer taxes in connection with the tender of Restricted Notes in the exchange offer unless you instruct us to register the Exchange Notes in the name of, or request that Restricted Notes not accepted in the exchange offer be returned to, a person other than the registered tendering holder. In those cases, you will be responsible for the payment of any applicable transfer tax.

Consequences of exchanging or failing to exchange Restricted Notes

The information below concerning specific interpretations of and positions taken by the staff of the SEC is not intended to constitute legal advice, and prospective purchasers should consult their own legal advisors with respect to those matters.

If you do not exchange your Restricted Notes for Exchange Notes in the exchange offer, your Restricted Notes will continue to be subject to the provisions of the indentures regarding transfer and exchange of the Restricted Notes and the restrictions on transfer of the Restricted Notes imposed by the Securities Act and state securities laws. These transfer restrictions are required because the Restricted Notes were issued under an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable state securities laws. In general, the Restricted Notes may not be offered or sold unless registered under the Securities Act, except under an exemption from, or in a transaction not subject to, the Securities Act and applicable state securities laws. We do not plan to register the Restricted Notes under the Securities Act.

Based on interpretations by the staff of the SEC, as detailed in a series of no-action letters issued to third parties, we believe that the Exchange Notes issued in the exchange offer may be offered for resale, resold or otherwise transferred by you without compliance with the registration and prospectus delivery requirements of the Securities Act as long as:

- you are acquiring the Exchange Notes in the ordinary course of your business;
- you are not participating, do not intend to participate and have no arrangement or understanding with any person to participate, in a distribution of the Exchange Notes; and
- you are not an affiliate of ours.

If you are an affiliate of ours, are engaged in or intend to engage in or have any arrangement or understanding with any person to participate in the distribution of the Exchange Notes:

- you cannot rely on the applicable interpretations of the staff of the SEC;
- you will not be entitled to participate in the exchange offer; and
- you must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any resale transaction.

We do not intend to seek our own interpretation regarding the exchange offer, and we cannot assure you that the staff of the SEC would make a similar determination with respect to the Exchange Notes as it has in other interpretations to third parties.

Each holder of Restricted Notes who wishes to exchange such Restricted Notes for the related Exchange Notes in the exchange offer represents that:

- it is not our affiliate;
- it is not engaged in, and does not intend to engage in, and has no arrangement or understanding with any person to participate in, a distribution of the Exchange Notes to be issued in the exchange offer;
- it is acquiring the Exchange Notes in its ordinary course of business; and
- if it is a broker-dealer, it will receive the Exchange Notes for its own account in exchange for Restricted Notes that were acquired by it as a result of its market-making or other trading activities and that it will deliver a prospectus in connection with any resale of the Exchange Notes it receives. For further information regarding resales of the Exchange Notes by participating broker-dealers, see the discussion under the caption "Plan of distribution."

As discussed above, in connection with resales of the Exchange Notes, any participating broker-dealer must deliver a prospectus meeting the requirements of the Securities Act. The staff of the SEC has taken the position that participating broker-dealers may fulfill their prospectus delivery requirements with respect to the Exchange Notes, other than a resale of an unsold allotment from the original sale of the Restricted Notes, with the prospectus contained in the exchange offer registration statement. Under the registration rights agreements, we have agreed, for a period of 120 days following the consummation of the exchange offer, to make available a prospectus meeting the requirements of the Securities Act to any participating broker-dealer for use in connection with any resale of any Exchange Notes acquired in the exchange offer.

DESCRIPTION OF THE EXCHANGE NOTES

Dave & Buster's, Inc. (the "Company") will issue the Exchange Notes under an Indenture (the "Indenture") among itself, the Guarantors and The Bank of New York Trust Company, N.A., as trustee (the "Trustee"). This is the same indenture under which the Restricted Notes were issued. The terms of the Exchange Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (the "Trust Indenture Act"). The Indenture is unlimited in aggregate principal amount, although the issuance of notes in this offering will be limited to $175,000,000. We may issue an unlimited principal amount of additional notes having identical terms and conditions as the Notes (the "Additional Notes"). We will only be permitted to issue such Additional Notes if at the time of such issuance, we were in compliance with the covenants contained in the Indenture. Any Additional Notes will be part of the same issue as the Notes that we are currently offering and will vote on all matters with the holders of the Notes.

The following is a summary of the material provisions of the Indenture but does not restate the Indenture in its entirety. You can find the definitions of certain capitalized terms used in the following summary under the subheading "—Certain definitions." Certain defined terms used in this description but not defined herein have the meanings assigned to them in the Indenture. The definitions used in this "Description of the Exchange Notes" may differ from definitions used elsewhere in this prospectus. We urge you to read the Indenture because it, and not this description, defines your rights as holders of the Exchange Notes. A copy of the Indenture is available upon request from the Company. For purposes of this "Description of the Exchange Notes," the terms the "Company," "we," "our" and "us" refer only to Dave & Buster's, Inc. and not to the Company's subsidiaries, and the term "Notes" includes the Restricted Notes and the Exchange Notes.

As of the Issue Date, all of our domestic subsidiaries were "Restricted Subsidiaries." Under the circumstances described under the caption "—Certain covenants—Limitation on restricted payments" and the definition of "Unrestricted Subsidiary," we will be permitted to designate certain of our subsidiaries as "Unrestricted Subsidiaries." Unrestricted Subsidiaries will not be subject to the restrictive covenants of the Indenture and will not guarantee these Notes.

Exchange Notes versus Restricted Notes

The terms of the Exchange Notes are substantially identical to those of the outstanding Restricted Notes, except that the transfer restrictions, registration rights and additional interest provisions relating to the Restricted Notes do not apply to the Exchange Notes.

General

The notes. The Notes:

- are general unsecured, unsubordinated obligations of the Company;
- are limited to an aggregate principal amount of $175,000,000, subject to our ability to issue Additional Notes;
- mature on March 15, 2014;
- will be issued in denominations of $1,000 and integral multiples of $1,000;
- will be represented by one or more Registered Notes in global form, but in certain circumstances may be represented by Notes in definitive form. See "Book-entry, settlement and clearance";
- rank equally in right of payment to any future unsubordinated Indebtedness of the Company;

- are unconditionally guaranteed on an unsubordinated basis by each of the Company's current and future Restricted Subsidiaries, other than its Foreign Subsidiaries; and

- are expected to be eligible for trading in the PORTAL market.

Interest. Interest on the Notes will compound semi-annually and:

- accrue at the rate of 11.25% per annum;

- accrue from the date of original issuance or, if interest has already been paid, from the most recent interest payment date;

- be payable in cash semi-annually in arrears on March 15 and September 15, commencing on September 15, 2006;

- be payable to the holders of record on the March 1 and September 1 immediately preceding the related interest payment dates; and

- be computed on the basis of a 360-day year comprised of twelve 30 day months.

We also will pay additional interest to holders of the Notes if we fail to complete the exchange offer described in the Registration Rights Agreement within 210 days or if certain other conditions contained in the Registration Rights Agreement are not satisfied. See "Exchange offer—Registration rights."

Payments on the notes; paying agent and registrar

We will pay principal of, premium, if any, and interest on the Notes at the office or agency designated by the Company in the Borough of Manhattan, The City of New York, except that we may, at our option, pay interest on the Notes by check mailed to holders of the Notes at their registered address as it appears in the Registrar's books. We have initially designated the corporate trust office of the Trustee in New York, New York to act as our Paying Agent and Registrar. We may, however, change the Paying Agent or Registrar without prior notice to the holders of the Notes, and the Company or any of its Restricted Subsidiaries may act as Paying Agent or Registrar.

We will pay principal of, premium, if any, and interest on, Notes in global form registered in the name of or held by The Depository Trust Company or its nominee in immediately available funds to The Depository Trust Company or its nominee, as the case may be, as the registered holder of such global Note.

Transfer and exchange

A holder may transfer or exchange Notes in accordance with the Indenture. The Registrar and the Trustee may require a holder, among other things, to furnish appropriate endorsements and transfer documents. No service charge will be imposed by the Company, the Trustee or the Registrar for any registration of transfer or exchange of Notes, but the Company may require a holder to pay a sum sufficient to cover any transfer tax or other governmental taxes and fees required by law or permitted by the Indenture. The Company is not required to transfer or exchange any Note selected for redemption. Also, the Company is not required to transfer or exchange any Note for a period of 15 days before a selection of Notes to be redeemed.

The registered holder of a Note will be treated as the owner of it for all purposes.

Optional redemption

Except as described below, the Notes are not redeemable until March 15, 2010. On and after March 15, 2010, the Company may redeem all or, from time to time, a part of the Notes (including any

Additional Notes, if any) upon not less than 30 nor more than 60 days' notice, at the following redemption prices (expressed as a percentage of principal amount) plus accrued and unpaid interest on the Notes, if any, to the applicable redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the twelve-month period beginning on March 15 of the years indicated below:

Year	Percentage
2010	105.625%
2011	102.813%
2012 and thereafter	100.000%

Prior to March 15, 2010, the Company may on any one or more occasions redeem up to 35% of the original principal amount of the Notes and Additional Notes, if any, with the Net Cash Proceeds of one or more Equity Offerings at a redemption price of 111.25% of the principal amount thereof, plus accrued and unpaid interest, if any, to the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided* that

(1) at least 65% of the original principal amount of the Notes and Additional Notes, if any, remains outstanding after each such redemption; and

(2) the redemption occurs within 90 days after the closing of such Equity Offering.

If the optional redemption date is on or after an interest record date and on or before the related interest payment date, the accrued and unpaid interest, if any, will be paid to the Person in whose name the Note is registered at the close of business, on such record date, and no additional interest will be payable to holders whose Notes will be subject to redemption by the Company.

In the case of any partial redemption, selection of the Notes for redemption will be made by the Trustee in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not listed, then on a pro rata basis, by lot or by such other method as the Trustee in its sole discretion will deem to be fair and appropriate, although no Note of $1,000 in original principal amount or less will be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption relating to such Note will state the portion of the principal amount thereof to be redeemed. A new Note in principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof upon cancellation of the original Note.

The Company is not required to make mandatory redemption payments or sinking fund payments with respect to the Notes.

The Company may acquire Notes by means other than a redemption, whether by tender offer, open market purchases, negotiated transactions or otherwise, in accordance with applicable securities laws, so long as such acquisition does not otherwise violate the terms of the Indenture.

Ranking

The Notes will be general unsecured obligations of the Company that rank senior in right of payment to all existing and future Indebtedness of the Company that is expressly subordinated in right of payment to the Notes. The Notes will rank equally in right of payment with all existing and future liabilities of the Company that are not so subordinated. The Notes will be structurally subordinated to all existing and future liabilities (including trade payables) and preferred stock of each Subsidiary of the Company that is not a Guarantor. Since the Notes are unsecured, in the event of bankruptcy, liquidation, reorganization or other winding up of the Company or the Guarantors or upon a default in payment with respect to, or the acceleration of, any Indebtedness under the Senior Secured Credit Agreement or other senior secured Indebtedness, the assets of the Company and the Guarantors that secure other senior secured Indebtedness will be available to pay obligations on the Notes and the

Guarantees only after all Indebtedness under such Senior Secured Credit Agreement and other senior secured Indebtedness has been repaid in full from such assets. We advise you that there may not be sufficient assets remaining to pay amounts due on any or all the Notes and the Guarantees then outstanding.

As of April 30, 2006:

- outstanding Indebtedness of the Company and the Guarantors was $237.4 million, $62.4 million of which was secured; and
- our non-guarantor Restricted Subsidiary had $1.4 million of indebtedness (excluding intercompany liabilities).

Note Guarantees

The Guarantors will, jointly and severally, unconditionally guarantee on a senior unsecured basis the Company's obligations under the Notes and all obligations under the Indenture. Such Guarantors will agree to pay, in addition to the amount stated above, any and all costs and expenses (including reasonable counsel fees and expenses) Incurred by the Trustee or the holders in enforcing any rights under the Note Guarantees. The obligations of the Guarantors under the Note Guarantees will rank equally in right of payment with other Indebtedness of such Guarantors, except to the extent such other Indebtedness is expressly subordinated to the obligations arising under the Note Guarantees. Since the Note Guarantees are unsecured obligations of each Guarantor, in the event of a bankruptcy or insolvency, such Guarantor's secured lenders will have a prior secured claim to any collateral securing the debt owed to them, including the collateral securing the Guarantors' guarantees of Indebtedness under the Senior Secured Credit Agreement.

Although the Indenture will limit the amount of indebtedness that Restricted Subsidiaries may Incur, such indebtedness may be substantial.

The obligations of each Guarantor under its Note Guarantee will be limited as necessary to prevent that Note Guarantee from constituting a fraudulent conveyance or fraudulent transfer under applicable law.

In the event a Guarantor is sold or disposed of (whether by merger, consolidation, the sale of its Capital Stock or the sale of all or substantially all of its assets (other than by lease)) and whether or not the Guarantor is the surviving corporation in such transaction to a Person which is not the Company or a Restricted Subsidiary of the Company, such Guarantor will be released from all its obligations under its Note Guarantee if:

(1) the sale or other disposition is in compliance with the Indenture, including the covenants "—Limitation on sales of assets and subsidiary stock" (it being understood that only such portion of the Net Available Cash as is required to be applied on or before the date of such release in accordance with the terms of the Indenture needs to be applied in accordance therewith at such time) and "—Merger and consolidation"; and

(2) all the obligations of such Guarantor under all Credit Facilities and related documentation and any other agreements relating to any other Indebtedness of the Company or its Restricted Subsidiaries terminate upon consummation of such transaction.

In addition, a Guarantor will be released from its obligations under the Indenture, its Note Guarantee and the Registration Rights Agreement if the Company designates such Subsidiary as an Unrestricted Subsidiary and such designation complies with the other applicable provisions of the Indenture. Finally, a Guarantor will be released from its obligations under the Indenture, its Note Guarantee and the Registration Rights Agreement in connection with any legal or covenant defeasance

of the Notes in accordance with the terms of the Indenture or upon satisfaction and discharge of the Indenture.

Change of Control

If a Change of Control occurs, unless the Company has exercised its right to redeem all of the Notes as described under "—Optional redemption," each holder will have the right to require the Company to repurchase all or any part (equal to $1,000 or an integral multiple thereof) of such holder's Notes at a purchase price in cash equal to 101% of the principal amount of the Notes plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date).

Within 30 days following any Change of Control, unless the Company has exercised its right to redeem all of the Notes as described under "—Optional redemption," the Company will mail a notice (the "Change of Control Offer") to each holder, with a copy to the Trustee, stating:

(1) that a Change of Control has occurred and that such holder has the right to require the Company to purchase such holder's Notes at a purchase price in cash equal to 101% of the principal amount of such Notes plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of holders of record on a record date to receive interest on the relevant interest payment date) (the "Change of Control Payment");

(2) the repurchase date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed) (the "Change of Control Payment Date"); and

(3) the procedures determined by the Company, consistent with the Indenture, that a holder must follow in order to have its Notes repurchased.

On the Change of Control Payment Date, the Company will, to the extent lawful:

(1) accept for payment all Notes or portions of Notes (in integral multiples of $1,000) properly tendered pursuant to the Change of Control Offer;

(2) deposit with the paying agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes so tendered; and

(3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by the Company.

A Change of Control Offer may be made in advance of a Change of Control, conditioned upon consummation of the Change of Control, if a definitive agreement is in effect at the time of making such Change of Control offer that, when consummated in accordance with its terms, will result in a Change of Control, *provided* that such Change of Control Offer complies with all applicable securities laws or regulations.

The paying agent will promptly mail to each holder of Notes so tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each such new Note will be in a principal amount of $1,000 or an integral multiple thereof.

If the Change of Control Payment Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest, if any, will be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest will be payable to holders who tender pursuant to the Change of Control Offer.

The Change of Control provisions described above will be applicable whether or not any other provisions of the Indenture are applicable. Except as described above with respect to a Change of Control, the Indenture does not contain provisions that permit the holders to require that the Company repurchase or redeem the Notes in the event of a takeover, recapitalization or similar transaction.

The Company will not be required to make a Change of Control Offer upon a Change of Control if (i) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer or (ii) notice of redemption has been given pursuant to the Indenture as described under the caption "—Optional redemption," unless and until there is a default of the applicable redemption price.

The Company will comply, to the extent applicable, with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this covenant. To the extent that the provisions of any securities laws or regulations conflict with provisions of the Indenture, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations described in the Indenture by virtue of the conflict.

The Company's ability to repurchase Notes pursuant to a Change of Control Offer may be limited by a number of factors. The occurrence of certain of the events that constitute a Change of Control would constitute a default under the Senior Secured Credit Agreement. In addition, certain events that may constitute a change of control under the Senior Secured Credit Agreement and cause a default under that agreement may not constitute a Change of Control under the Indenture. Future Indebtedness of the Company and its Subsidiaries may also contain prohibitions of certain events that would constitute a Change of Control or require such Indebtedness to be repurchased upon a Change of Control. Moreover, the exercise by the holders of their right to require the Company to repurchase the Notes could cause a default under such Indebtedness, even if the Change of Control itself does not, due to the financial effect of such repurchase on the Company. Finally, the Company's ability to pay cash to the holders upon a repurchase may be limited by the Company's then existing financial resources. There can be no assurance that sufficient funds will be available when necessary to make any required repurchases.

Even if sufficient funds were otherwise available, the terms of the Senior Secured Credit Agreement will, and future Indebtedness may, prohibit the Company's prepayment of Notes before their scheduled maturity. Consequently, if the Company is not able to prepay the Senior Secured Credit Agreement Indebtedness and any such other Indebtedness containing similar restrictions or obtain requisite consents, as described above, the Company will be unable to fulfill its repurchase obligations if holders of Notes exercise their repurchase rights following a Change of Control, resulting in a default under the Indenture. A default under the Indenture may result in a cross default under the Senior Secured Credit Agreement.

The Change of Control provisions described above may deter certain mergers, tender offers and other takeover attempts involving the Company by increasing the capital required to effectuate such transactions. The definition of "Change of Control" includes a disposition of all or substantially all of the property and assets of the Company and its Restricted Subsidiaries taken as a whole to any Person other than a Permitted Holder or their Related Persons. Although there is a limited body of case law interpreting the phrase "substantially all," there is no precise established definition of the phrase under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve a disposition of "all or substantially all" of the property or assets of a Person. As a result, it may be unclear as to whether a Change of Control has occurred

and whether a holder of Notes may require the Company to make an offer to repurchase the Notes as described above.

The provisions under the Indenture relative to the Company's obligation to make an offer to repurchase the Notes as a result of a Change of Control may be waived or modified with the written consent of the holders of a majority in principal amount of the Notes.

Certain covenants

Limitation on indebtedness

The Company will not, and will not permit any of its Restricted Subsidiaries to, Incur any Indebtedness (including Acquired Indebtedness); *provided*, *however*, that the Company and the Guarantors may Incur Indebtedness (including Acquired Indebtedness) if on the date thereof:

(1) the Consolidated Coverage Ratio for the Company and its Restricted Subsidiaries is at least 2.00 to 1.00; and

(2) no Default or Event of Default will have occurred or be continuing or would occur as a consequence of Incurring the Indebtedness or transactions relating to such Incurrence.

The first paragraph of this covenant will not prohibit the Incurrence of the following Indebtedness:

(1) Indebtedness of the Company or any Guarantor Incurred pursuant to a Credit Facility in an aggregate amount up to $160.0 million less the aggregate principal amount of all principal repayments with the proceeds from Asset Dispositions utilized in accordance with clause 3(a) of "— Limitations on sales of assets and subsidiary stock" that permanently reduce the commitments thereunder;

(2) (x) Guarantees by the Company or Guarantors of Indebtedness Incurred by the Company or a Guarantor in accordance with the provisions of the Indenture; provided that in the event such Indebtedness that is being Guaranteed is a Subordinated Obligation or a Guarantor Subordinated Obligation, then the related Guarantee shall be subordinated in right of payment to the Notes or the Subsidiary's Note Guarantee, as the case may be; and (y) Guarantees by Non-Guarantor Restricted Subsidiaries of Indebtedness Incurred by Non-Guarantor Restricted Subsidiaries in accordance with the provisions of the Indenture;

(3) Indebtedness of the Company owing to and held by any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary owing to and held by the Company or any other Restricted Subsidiary; *provided*, *however*,

(a) if the Company is the obligor on such Indebtedness, such Indebtedness is expressly subordinated to the prior payment in full in cash of all obligations with respect to the Notes;

(b) if a Guarantor is the obligor on such Indebtedness and the Company or a Guarantor is not the obligee, such Indebtedness is subordinated in right of payment to the Note Guarantees of such Guarantor; and

(c)

(i) any subsequent issuance or transfer of Capital Stock or any other event which results in any such Indebtedness being beneficially held by a Person other than the Company or a Restricted Subsidiary of the Company; and

(ii) any sale or other transfer of any such Indebtedness to a Person other than the Company or a Restricted Subsidiary of the Company shall be deemed, in each case, to constitute an Incurrence of such Indebtedness by the Company or such Subsidiary not permitted by this clause (3), as the case may be;

(4) Indebtedness represented by (a) the Notes issued on the Issue Date, the Note Guarantees of the Guarantors and the related exchange notes and exchange guarantees issued in a registered exchange offer pursuant to the Registration Rights Agreement, (b) any Indebtedness (other than the Indebtedness described in clauses (1), (2), (3), (6), (8), (9) and (10)) outstanding on the Issue Date and (c) any Refinancing Indebtedness Incurred in respect of any Indebtedness (including Refinancing Indebtedness) described in this clause (4) or clause (5) or Incurred pursuant to the first paragraph of this covenant;

(5) Indebtedness of a Restricted Subsidiary Incurred and outstanding on the date on which such Restricted Subsidiary was acquired by, or merged into, the Company or any Restricted Subsidiary (other than Indebtedness Incurred (a) to provide all or any portion of the funds utilized to consummate the transaction or series of related transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was otherwise acquired by the Company or (b) otherwise in connection with, or in contemplation of, such acquisition); *provided*, *however*, that at the time such Restricted Subsidiary is acquired by the Company, the Company would have been able to Incur $1.00 of additional Indebtedness pursuant to the first paragraph of this covenant after giving effect to the Incurrence of such Indebtedness pursuant to this clause (5);

(6) Indebtedness under Hedging Obligations that are Incurred in the ordinary course of business (and not for speculative purposes) (1) for the purpose of fixing or hedging interest rate risk with respect to any Indebtedness Incurred in accordance with the Indenture; (2) for the purpose of fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (3) for the purpose of fixing or hedging commodity price risk with respect to any commodities;

(7) the Incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness represented by Capitalized Lease Obligations, mortgage financings or purchase money obligations with respect to assets other than Capital Stock or other Investments, in each case Incurred for the purpose of financing all or any part of the purchase price or cost of construction or improvements of property used in the business of the Company or such Restricted Subsidiary, and Attributable Indebtedness, in an aggregate principal amount not to exceed the greater of (x) 3% of Consolidated Net Tangible Assets and (y) $10.0 million at any time outstanding, including all Refinancing Indebtedness Incurred to refund, defease, renew, extend, refinance or replace any Indebtedness Incurred pursuant to this clause (7);

(8) Indebtedness Incurred in respect of workers' compensation claims, self insurance obligations, performance, surety and similar bonds and completion guarantees provided by the Company or a Restricted Subsidiary in the ordinary course of business;

(9) Indebtedness arising from agreements of the Company or a Restricted Subsidiary providing for indemnification, adjustment of purchase price or similar obligations, in each case, Incurred or assumed in connection with the disposition of any business, assets or Capital Stock of a Restricted Subsidiary, *provided* that the maximum aggregate liability in respect of all such Indebtedness shall at no time exceed the gross proceeds actually received by the Company and its Restricted Subsidiaries in connection with such disposition;

(10) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business, *provided*, *however*, that such Indebtedness is extinguished within five business days of Incurrence; and

(11) in addition to the items referred to in clauses (1) through (10) above, Indebtedness of the Company and its Guarantors in an aggregate outstanding principal amount which, when taken

together with the principal amount of all other Indebtedness Incurred pursuant to this clause (11) and then outstanding, will not exceed $25.0 million at any time outstanding, including all Refinancing Indebtedness Incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness Incurred pursuant to this clause (11); *provided* that a Foreign Subsidiary that is not a Guarantor can Incur Indebtedness under this clause (11) of up to $5.0 million at any one time outstanding.

The Company will not Incur any Indebtedness under the preceding paragraph if the proceeds thereof are used, directly or indirectly, to refinance any Subordinated Obligations of the Company unless such Indebtedness will be subordinated to the Notes, if any, to at least the same extent as such Subordinated Obligations. No Guarantor will Incur any Indebtedness if the proceeds thereof are used, directly or indirectly, to refinance any Guarantor Subordinated Obligations of such Guarantor unless such Indebtedness will be subordinated to the obligations of such Guarantor under its Note Guarantee to at least the same extent as such Guarantor Subordinated Obligations. No Restricted Subsidiary (other than a Guarantor) may Incur any Indebtedness if the proceeds are used to refinance Indebtedness of the Company or a Guarantor.

For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness Incurred pursuant to and in compliance with, this covenant:

(1) in the event that Indebtedness meets the criteria of more than one of the types of Indebtedness described in the first and second paragraphs of this covenant, the Company, in its sole discretion, will classify such item of Indebtedness on the date of Incurrence and, with the exception of clause (1) of the second paragraph, may later classify such item of Indebtedness in any manner that complies with this covenant and only be required to include the amount and type of such Indebtedness in one of such clauses;

(2) all Indebtedness outstanding on the date of the Indenture under the Senior Secured Credit Agreement shall be deemed Incurred under clause (1) of the second paragraph of this covenant and not the first paragraph or clause (4) of the second paragraph of this covenant;

(3) Guarantees of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included;

(4) if obligations in respect of letters of credit are Incurred pursuant to a Credit Facility and are being treated as Incurred pursuant to clause (1) of the second paragraph above and the letters of credit relate to other Indebtedness, then such other Indebtedness shall not be included;

(5) the principal amount of any Disqualified Stock of the Company or a Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary that is not a Guarantor, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof;

(6) Indebtedness permitted by this covenant need not be permitted solely by reference to one provision permitting such Indebtedness but may be permitted in part by one such provision and in part by one or more other provisions of this covenant permitting such Indebtedness; and

(7) the amount of Indebtedness issued at a price that is less than the principal amount thereof will be equal to the amount of the liability in respect thereof determined in accordance with GAAP.

Accrual of interest, accrual of dividends, the accretion of accreted value, the payment of interest in the form of additional Indebtedness, the reclassification of Preferred Stock as Indebtedness due to a change in accounting principles and the payment of dividends in the form of additional shares of

Preferred Stock or Disqualified Stock will not be deemed to be an Incurrence of Indebtedness for purposes of this covenant. The amount of any Indebtedness outstanding as of any date shall be (i) the accreted value thereof in the case of any Indebtedness issued with original issue discount and (ii) the principal amount or liquidation preference thereof, together with any interest thereon that is more than 30 days past due, in the case of any other Indebtedness.

In addition, the Company will not permit any of its Unrestricted Subsidiaries to Incur any Indebtedness or issue any shares of Disqualified Stock, other than Non Recourse Debt. If at any time an Unrestricted Subsidiary becomes a Restricted Subsidiary, any Indebtedness of such Subsidiary shall be deemed to be Incurred by a Restricted Subsidiary as of such date (and, if such Indebtedness is not permitted to be Incurred as of such date under this "Limitation on indebtedness" covenant, the Company shall be in Default of this covenant).

For purposes of determining compliance with any U.S. dollar-denominated restriction on the Incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness; *provided* that if such Indebtedness is Incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced. Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that the Company may Incur pursuant to this covenant shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

Limitation on restricted payments

The Company will not, and will not permit any of its Restricted Subsidiaries, directly or indirectly, to:

(1) declare or pay any dividend or make any distribution (whether made in cash, securities or other property) on or in respect of its Capital Stock (including any payment in connection with any merger or consolidation involving the Company or any of its Restricted Subsidiaries) except:

  (a) dividends or distributions payable in Equity Interests (other than Disqualified Stock) of the Company; and

  (b) dividends or distributions payable to the Company or a Restricted Subsidiary (and if such Restricted Subsidiary is not a Wholly-Owned Subsidiary, to its other holders of Capital Stock on a pro rata basis, taking into account the relative preferences, if any, of the various classes of Capital Stock in such Restricted Subsidiaries);

(2) purchase, redeem, retire or otherwise acquire for value any Capital Stock of the Company or any direct or indirect parent of the Company held by Persons other than the Company or a Restricted Subsidiary (other than in exchange for Equity Interests of the Company (other than Disqualified Stock));

(3) purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any

Subordinated Obligations or Guarantor Subordinated Obligations (other than (x) Indebtedness of the Company owing to and held by any Guarantor or Indebtedness of a Guarantor owing to and held by the Company or any other Guarantor permitted under clause (3) of the second paragraph of the covenant "—Limitation on indebtedness" or (y) the purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Obligations or Guarantor Subordinated Obligations purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of purchase, repurchase, redemption, defeasance or other acquisition or retirement); or

(4) make any Restricted Investment in any Person;

(any such dividend, distribution, purchase, redemption, repurchase, defeasance, other acquisition, retirement or Restricted Investment referred to in clauses (1) through (4) shall be referred to herein as a "Restricted Payment"), if at the time the Company or such Restricted Subsidiary makes such Restricted Payment:

(a) a Default shall have occurred and be continuing (or would result therefrom); or

(b) the Company is not able to Incur an additional $1.00 of Indebtedness pursuant to the first paragraph under the "—Limitation on indebtedness" covenant after giving effect, on a pro forma basis, to such Restricted Payment; or

(c) the aggregate amount of such Restricted Payment and all other Restricted Payments declared or made subsequent to the Issue Date (excluding clauses (1), (2), (3), (4), (6), (7), (8), (9), (10) and (11)) would exceed the sum of:

(i) 50% of (i) Consolidated Net Income for the period (treated as one accounting period) from the beginning of the Company's last completed fiscal quarter preceding the Issue Date to the end of the most recent fiscal quarter ending prior to the date of such Restricted Payment for which financial statements are in existence (or, in case such Consolidated Net Income is a deficit) minus 100% of such deficit and (ii) any dividends received by the Company or a Wholly-Owned Subsidiary of the Company that is a Guarantor after the Issue Date from an Unrestricted Subsidiary of the Company, to the extent that such dividends were not otherwise included in Consolidated Net Income for such periods or otherwise included in clause (v) below;

(ii) 100% of the aggregate Net Cash Proceeds and the fair market value of the assets (as determined conclusively by the Board of Directors of the Company) received by the Company from the issue or sale of its Equity Interests (other than Disqualified Stock) or other capital contributions subsequent to the Issue Date (other than Net Cash Proceeds received from an issuance or sale of such Capital Stock to a Subsidiary of the Company or an employee stock ownership plan, option plan or similar trust to the extent such sale to an employee stock ownership plan or similar trust is financed by loans from or Guaranteed by the Company or any Restricted Subsidiary unless such loans have been repaid with cash on or prior to the date of determination) excluding in any event Net Cash Proceeds received by the Company from the issue and sale of its Capital Stock or capital contributions to the extent applied to redeem Notes in compliance with the provisions set forth under the second paragraph of the caption "—Optional redemption," provided that this clause (ii) shall not apply to Net Cash Proceeds received in connection with the Transactions, as contemplated in this prospectus;

(iii) the amount by which Indebtedness of the Company or its Restricted Subsidiaries is reduced on the Company's balance sheet upon the conversion or exchange (other than by a Subsidiary of the Company) subsequent to the Issue Date of any

Indebtedness of the Company or its Restricted Subsidiaries convertible or exchangeable for Capital Stock (other than Disqualified Stock) of the Company (less the amount of any cash, or the fair market value of any other property, distributed by the Company upon such conversion or exchange);

(iv) to the extent that any Unrestricted Subsidiary designated as such after the Issue Date (A) is redesignated as a Restricted Subsidiary, (B) is merged or consolidated into the Company or any of its Restricted Subsidiaries or (C) transfers all or substantially all of its assets to the Company or any of its Restricted Subsidiaries after the Issue Date, the fair market value (as determined conclusively by the Board of Directors of the Company) of (x) in the case of clause (A) or (B) above, the Company's Investment in such Subsidiary as of the date of such redesignation, merger or consolidation and (y) in the case of clause (C) above, such assets (other than to the extent the Investment in such Unrestricted Subsidiary was made pursuant to clause (12) of the next succeeding paragraph or pursuant to clause (11) of the definition of Permitted Investment); and

(v) to the extent that any Restricted Investment that was made after the Issue Date of the Indenture is sold for cash or otherwise liquidated, repaid, repurchased or redeemed for cash, the lesser of (i) the cash return of capital with respect to such Restricted Investment (less the cost of disposition, if any), and (ii) the initial amount of such Restricted Investment to the extent such amount was not already included in Consolidated Net Income.

The provisions of the preceding paragraph will not prohibit:

(1) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Capital Stock, Disqualified Stock or Subordinated Obligations of the Company or Guarantor Subordinated Obligations of any Guarantor made by exchange for, or out of the proceeds of (i) the substantially contemporaneous contribution of common equity capital to the Company or (ii) the substantially concurrent sale of, Capital Stock of the Company (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary or an employee stock ownership plan or similar trust to the extent such sale to an employee stock ownership plan or similar trust is financed by loans from or Guaranteed by the Company or any Restricted Subsidiary unless such loans have been repaid with cash on or prior to the date of determination); *provided*, *however*, that the Net Cash Proceeds from such sale of Capital Stock will be excluded from clause (c)(ii) of the preceding paragraph;

(2) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Obligations of the Company or Guarantor Subordinated Obligations of any Guarantor made by exchange for, or out of the proceeds of the substantially concurrent sale of, Subordinated Obligations of the Company or any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Guarantor Subordinated Obligations made by exchange for or out of the proceeds of the substantially concurrent sale of Guarantor Subordinated Obligations that, in each case, is permitted to be Incurred pursuant to the covenant described under "—Limitation on indebtedness" and that in each case constitutes Refinancing Indebtedness;

(3) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Disqualified Stock of the Company or a Restricted Subsidiary made by exchange for or out of the proceeds of the substantially concurrent sale of Disqualified Stock of the Company or such Restricted Subsidiary, as the case may be, that, in each case, is permitted to be Incurred pursuant to the covenant described under "—Limitation on indebtedness" and that in each case constitutes Refinancing Indebtedness;

(4) so long as no Default or Event of Default has occurred and is continuing, any purchase or redemption of Subordinated Obligations or Guarantor Subordinated Obligations of a Guarantor from Net Available Cash to the extent permitted under "—Limitation on sales of assets and subsidiary stock" below;

(5) dividends paid within 60 days after the date of declaration if at such date of declaration such dividend would have complied with this provision and the consummation of any irrevocable redemption within 60 days after the giving of the redemption notice if at the date of such notice the redemption payment would have complied with this provision;

(6) so long as no Default or Event of Default has occurred and is continuing, the purchase, redemption or other acquisition, cancellation or retirement for value of Equity Interests of the Company or any Restricted Subsidiary or any parent of the Company held by any existing or former employees or management or directors of the Company or Holdings or any Subsidiary of the Company or their assigns, estates or heirs, in each case in connection with (x) the death or disability of such employee, manager or director or (y) the repurchase provisions under employee stock option or stock purchase agreements or other agreements to compensate management employees or directors; *provided* that in the case of clause (y) such redemptions or repurchases pursuant to such clause will not exceed $2.5 million in the aggregate during any twelve-month period *plus* the aggregate Net Cash Proceeds received by the Company after the Issue Date from the issuance of such Capital Stock or equity appreciation rights to, or the exercise of options, warrants or other rights to purchase or acquire Capital Stock of the Company by, any current or former director, officer or employee of the Company or any Restricted Subsidiary; *provided* that the amount of such Net Cash Proceeds received by the Company and utilized pursuant to this clause (6) for any such repurchase, redemption, acquisition or retirement will be excluded from clause (c)(ii) of the preceding paragraph) and *provided*, *further*, that unused amounts available pursuant to this clause (6) to be utilized for Restricted Payments during any twelve-month period may be carried forward and utilized in the next succeeding twelve-month period;

(7) so long as no Default or Event of Default has occurred and is continuing, the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Company or Preferred Stock of any Guarantor issued in accordance with the terms of the Indenture to the extent such dividends are included in the definition of "Consolidated Interest Expense";

(8) repurchases of Capital Stock deemed to occur upon the exercise of stock options, warrants or other convertible securities if such Capital Stock represents (i) a portion of the exercise price thereof or (ii) withholding incurred in connection with such exercise, provided that the amount of such withholding taxes shall reduce the amount set forth in clause (6) above;

(9) cash dividends or loans to Holdings ("Permitted Holdings Payments") in amounts equal to:

(a) the amounts required for Holdings to pay any Federal, state or local income taxes to the extent that such income taxes are directly attributable to the income of Holdings, the Company and its Restricted Subsidiaries and, to the extent of amounts actually received from Unrestricted Subsidiaries, in amounts required to pay such taxes to the extent attributable to the income of the Unrestricted Subsidiaries;

(b) the amounts required for Holdings to pay franchise taxes and other fees required to maintain its legal existence;

(c) an amount not to exceed $1.0 million in any fiscal year to permit Holdings to pay its corporate overhead expenses Incurred in the ordinary course of business, and to pay salaries or other compensation of employees who perform services for both Holdings and the Company;

(d) dividends or distributions to Holdings to permit Holdings to satisfy its payment obligations, if any under the Expense Reimbursement Agreement as in effect on the Issue Date, or as later amended, provided that any such amendment is not more disadvantageous to the Company in any material respect that the Expense Reimbursement Agreement as in effect on the Issue Date; and

(e) any fees and expenses related to any equity offering or other financing of any direct or indirect parent of the Company to the extent the proceeds of such offering or financing are contributed to the Company;

(10) any payments made in connection with the Transactions pursuant to the Merger Agreement and any other agreements or documents related to the Transactions and set forth on a schedule to the Indenture in effect on the closing date of the Transactions (without giving effect to subsequent amendments, waivers or other modifications to such agreements or documents) or as otherwise described in this prospectus;

(11) the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of any Subordinated Obligation (i) at a purchase price not greater than 101% of the principal amount of such Subordinated Obligation in the event of a Change of Control in accordance with provisions similar to the "—Change of control" covenant or (ii) at a purchase price not greater than 100% of the principal amount thereof in accordance with provisions similar to the "—Limitation on sales of assets and subsidiary stock" covenant; provided that, prior to or simultaneously with such purchase, repurchase, redemption, defeasance or other acquisition or retirement, the Company has made the Change of Control Offer or Asset Disposition Offer, as applicable, as provided in such covenant with respect to the Notes and has completed the repurchase or redemption of all Notes validly tendered for payment in connection with such Change of Control Offer or Asset Disposition Offer; and

(12) Restricted Payments in an amount not to exceed $5.0 million.

The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment. The fair market value of any cash Restricted Payment shall be its face amount and the fair market value of any non cash Restricted Payment shall be determined conclusively by the Board of Directors of the Company acting in good faith whose resolution with respect thereto shall be delivered to the Trustee, such determination to be based upon an opinion or appraisal issued by an accounting, appraisal or investment banking firm of national standing if such fair market value is estimated in good faith by the Board of Directors of the Company to exceed $15.0 million. Not later than the date of making any Restricted Payment, the Company shall deliver to the Trustee an Officers' Certificate stating that such Restricted Payment is permitted and setting forth the basis upon which the calculations required by the covenant "Restricted Payments" were computed, together with a copy of any fairness opinion or appraisal required by the Indenture.

Limitation on liens

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, Incur or suffer to exist any Lien (other than Permitted Liens) upon any of its property or assets (including Capital Stock of Restricted Subsidiaries), whether owned on the date of the Indenture or acquired after that date, which Lien is securing any Indebtedness, unless contemporaneously with the Incurrence of such Liens effective provision is made to secure the Indebtedness due under the Indenture and the Notes or, in respect of Liens on any Restricted Subsidiary's property or assets, any Note Guarantee of such Restricted Subsidiary, equally and ratably with (or senior in priority to in the case of Liens with respect to Subordinated Obligations or

Guarantor Subordinated Obligations) the Indebtedness secured by such Lien for so long as such Indebtedness is so secured.

Limitation on sale/leaseback transactions

The Company will not, and will not permit any of its Restricted Subsidiaries to, enter into any Sale/Leaseback Transaction *unless*:

(1) the Company or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Sale/Leaseback Transaction at least equal to the fair market value (as evidenced by a resolution of the Board of Directors of the Company) of the property subject to such transaction;

(2) the Company or such Restricted Subsidiary could have Incurred Indebtedness in an amount equal to the Attributable Indebtedness in respect of such Sale/Leaseback Transaction pursuant to the covenant described under "—Limitation on indebtedness;"

(3) the Company or such Restricted Subsidiary would be permitted to create a Lien on the property subject to such Sale/Leaseback Transaction without securing the Notes by the covenant described under "—Limitation on liens"; and

(4) the Sale/Leaseback Transaction is treated as an Asset Disposition and all of the conditions of the Indenture described under "—Limitation on sales of assets and subsidiary stock" (including the provisions concerning the application of Net Available Cash) are satisfied with respect to such Sale/Leaseback Transaction, treating all of the consideration received in such Sale/Leaseback Transaction as Net Available Cash for purposes of such covenant.

Limitation on restrictions on distributions from restricted subsidiaries

The Company will not, and will not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

(1) pay dividends or make any other distributions on its Capital Stock or pay any Indebtedness or other obligations owed to the Company or any Restricted Subsidiary (it being understood that the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on Common Stock shall not be deemed a restriction on the ability to make distributions on Capital Stock);

(2) make any loans or advances to the Company or any Restricted Subsidiary (it being understood that the subordination of loans or advances made to the Company or any Restricted Subsidiary to other Indebtedness Incurred by the Company or any Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances); or

(3) transfer any of its property or assets to the Company or any Restricted Subsidiary (it being understood that such transfers shall not include any type of transfer described in clause (1) or (2) above).

The preceding provisions will not prohibit:

(i) any encumbrance or restriction pursuant to an agreement in effect at or entered into on the Issue Date, including, without limitation, the Indenture, the Notes, the Exchange Notes, the Note Guarantees, and the Senior Secured Credit Agreement (and related documentation) in effect on such date;

(ii) any encumbrance or restriction with respect to a Restricted Subsidiary pursuant to an agreement relating to any Equity Interests or Indebtedness Incurred by a Restricted Subsidiary

on or before the date on which such Restricted Subsidiary was acquired by the Company or a Restricted Subsidiary (other than Equity Interests or Indebtedness Incurred as consideration in, or to provide all or any portion of the funds utilized to consummate, the transaction or series of related transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was acquired by the Company or in contemplation of the transaction) and outstanding on such date, *provided* that any such encumbrance or restriction shall not extend to any assets or property of the Company or any other Restricted Subsidiary other than the assets and property so acquired, and, that in the case of Indebtedness, such Indebtedness was permitted by the terms of the Indenture to be Incurred;

(iii) any encumbrance or restriction (A) with respect to a Restricted Subsidiary pursuant to an agreement effecting a refunding, replacement or refinancing of Indebtedness Incurred pursuant to an agreement referred to in clause (i) or (ii) of this paragraph or this clause (iii) or (B) contained in any amendment, restatement, modification, renewal, supplement, refunding, replacement or refinancing of an agreement referred to in clause (i) or (ii) of this paragraph or this clause (iii); *provided*, *however*, that the encumbrances and restrictions with respect to such Restricted Subsidiary contained in any such agreement, amendment, restatement, modification, renewal, supplement, refunding, replacement or refinancing are no less favorable in any material respect, taken as a whole, in the good faith determination of the Company, to the holders of the Notes than the encumbrances and restrictions contained in such agreements referred to in clauses (i) or (ii) of this paragraph on the Issue Date or the date such Restricted Subsidiary became a Restricted Subsidiary or was merged into a Restricted Subsidiary, whichever is applicable;

(iv) in the case of clause (3) of the first paragraph of this covenant, any encumbrance or restriction:

(A) that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license or similar contract, or the assignment or transfer of any such lease, license or other similar contract;

(B) contained in mortgages, pledges or other security agreements permitted under the Indenture securing Indebtedness of the Company or a Restricted Subsidiary to the extent such encumbrances or restrictions restrict the transfer of the property subject to such mortgages, pledges or other security agreements; or

(C) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Company or any Restricted Subsidiary;

(v) (a) purchase money obligations for property acquired in the ordinary course of business and (b) Capitalized Lease Obligations permitted under the Indenture, in each case, that impose encumbrances or restrictions of the nature described in clause (3) of the first paragraph of this covenant on the property so acquired;

(vi) any restriction with respect to a Restricted Subsidiary (or any of its property or assets) imposed pursuant to an agreement entered into for the direct or indirect sale or disposition of the Equity Interests or assets of such Restricted Subsidiary (or the property or assets that are subject to such restriction) pending the closing of such sale or disposition;

(viii) any customary provisions in joint venture agreements relating to joint ventures that are not Restricted Subsidiaries and other similar agreements entered into in the ordinary course of business;

(ix) restrictions on cash and other deposits or net worth provisions in leases and other agreements entered into by the Company or any Restricted Subsidiary in the ordinary course of business;

(x) encumbrances or restrictions arising or existing by reason of applicable law or any applicable rule, regulation or order;

(xi) encumbrances or restrictions contained in indentures or debt instruments or other debt arrangements Incurred or Preferred Stock issued by Guarantors in accordance with "—Limitation on indebtedness" that are not more restrictive, taken as a whole, than those applicable to the Company in either the Indenture or the Senior Secured Credit Agreement on the Issue Date (which results in encumbrances or restrictions comparable to those applicable to the Company at a Restricted Subsidiary level); and

(xii) encumbrances or restrictions contained in indentures or other debt instruments or debt arrangements Incurred or Preferred Stock issued subsequent to the Issue Date by Restricted Subsidiaries that are not Guarantors pursuant to clause (5) of the second paragraph of the covenant "—Limitation on indebtedness" by Restricted Subsidiaries.

Limitation on sales of assets and subsidiary stock

The Company will not, and will not permit any of its Restricted Subsidiaries to, make any Asset Disposition *unless*:

(1) the Company or such Restricted Subsidiary, as the case may be, receives consideration at least equal to the fair market value (such fair market value to be determined on the date of contractually agreeing to such Asset Disposition), as determined in good faith by the Board of Directors (including as to the value of all non cash consideration), of the shares and assets subject to such Asset Disposition;

(2) at least 75% of the consideration from such Asset Disposition received by the Company or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; provided that for the purposes of this covenant, the following will be deemed to be cash:

(a) the assumption by the transferee of Indebtedness (other than Subordinated Obligations or Disqualified Stock) of the Company or Indebtedness of a Restricted Subsidiary (other than Guarantor Subordinated Obligations or Disqualified Stock of any Guarantor) and the release of the Company or such Restricted Subsidiary from all liability on such Indebtedness in connection with such Asset Disposition (in which case the Company will, without further action, be deemed to have applied such deemed cash to Indebtedness); and

(b) securities, notes or other obligations received by the Company or any Restricted Subsidiary from the transferee that are converted by the Company or such Restricted Subsidiary into cash within 180 days after receipt; and

(3) an amount equal to 100% of the Net Available Cash from such Asset Disposition is applied by the Company or such Restricted Subsidiary, as the case may be:

(a) to repay Indebtedness of the Company (other than any Disqualified Stock or Subordinated Obligations) or Indebtedness of a Restricted Subsidiary (other than any Disqualified Stock or Guarantor Subordinated Obligations of a Guarantor) (in each case other than Indebtedness owed to the Company or an Affiliate of the Company) and, if the Indebtedness repaid is revolving credit Indebtedness, to correspondingly reduce commitments with respect thereto within 365 days after the later of the date of such Asset Disposition or the receipt of such Net Available Cash; or

(b) to invest in Additional Assets within 365 days from the later of the date of such Asset Disposition or the receipt of such Net Available Cash (or enter into a definitive agreement with respect thereto that is consummated within 545 days after the days after the receipt of any such Net Available Cash),

provided that pending the final application of any such Net Available Cash in accordance with clause (a) or clause (b) above, the Company and its Restricted Subsidiaries may temporarily reduce Indebtedness or otherwise invest such Net Available Cash in any manner not prohibited by the Indenture.

Any Net Available Cash from Asset Dispositions that are not applied or invested as provided in the preceding paragraph will be deemed to constitute "Excess Proceeds." On the 366th day after an Asset Disposition (or such later date as permitted in 3(b) of the immediately preceding paragraph), if the aggregate amount of Excess Proceeds exceeds $10.0 million, the Company will be required to make an offer ("Asset Disposition Offer") to all holders of Notes and to the extent required by the terms of other Pari Passu Indebtedness, to all holders of other Pari Passu Indebtedness outstanding with similar provisions requiring the Company to make an offer to purchase such Pari Passu Indebtedness with the proceeds from any Asset Disposition ("Pari Passu Notes"), to purchase the maximum principal amount of Notes and any such Pari Passu Notes to which the Asset Disposition Offer applies that may be purchased out of the Excess Proceeds, at an offer price in cash in an amount equal to 100% of the principal amount of the Notes and Pari Passu Notes plus accrued and unpaid interest to the date of purchase, in accordance with the procedures set forth in the Indenture or the agreements governing the Pari Passu Notes, as applicable, in the case of the Notes in integral multiples of $1,000. To the extent that the aggregate amount of Notes and Pari Passu Notes so validly tendered and not properly withdrawn pursuant to an Asset Disposition Offer is less than the Excess Proceeds, the Company may use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in the Indenture. If the aggregate principal amount of Notes surrendered by holders thereof and other Pari Passu Notes surrendered by holders or lenders, collectively, exceeds the amount of Excess Proceeds, the Trustee shall select the Notes and Pari Passu Notes to be purchased on a pro rata basis on the basis of the aggregate principal amount of tendered Notes and Pari Passu Notes. Upon completion of such Asset Disposition Offer, the amount of Excess Proceeds shall be reset at zero. Notwithstanding anything to the contrary in the foregoing, the Company may commence an Asset Disposition Offer prior to the expiration of 365 days after the occurrence of an Asset Disposition (or such later date after giving effect to the proviso in 3(b) of the immediately preceding paragraph, *provided* that such Asset Disposition Offer complies with all applicable securities laws and regulations).

The Asset Disposition Offer will remain open for a period of 20 Business Days following its commencement, except to the extent that a longer period is required by applicable law (the "Asset Disposition Offer Period"). No later than five Business Days after the termination of the Asset Disposition Offer Period (the "Asset Disposition Purchase Date"), the Company will purchase the principal amount of Notes and Pari Passu Notes required to be purchased pursuant to this covenant (the "Asset Disposition Offer Amount") or, if less than the Asset Disposition Offer Amount has been so validly tendered, all Notes and Pari Passu Notes validly tendered in response to the Asset Disposition Offer.

If the Asset Disposition Purchase Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest will be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest will be payable to holders who tender Notes pursuant to the Asset Disposition Offer.

On or before the Asset Disposition Purchase Date, the Company will, to the extent lawful, accept for payment, on a pro rata basis to the extent necessary, the Asset Disposition Offer Amount of Notes and Pari Passu Notes or portions of Notes and Pari Passu Notes so validly tendered and not properly

withdrawn pursuant to the Asset Disposition Offer, or if less than the Asset Disposition Offer Amount has been validly tendered and not properly withdrawn, all Notes and Pari Passu Notes so validly tendered and not properly withdrawn, in the case of the Notes in integral multiples of $1,000. The Company will deliver to the Trustee an Officers' Certificate stating that such Notes or portions thereof were accepted for payment by the Company in accordance with the terms of this covenant and, in addition, the Company will deliver all certificates and notes required, if any, by the agreements governing the Pari Passu Notes. The Company or the Paying Agent, as the case may be, will promptly (but in any case not later than five Business Days after termination of the Asset Disposition Offer Period) mail or deliver to each tendering holder of Notes or holder or lender of Pari Passu Notes, as the case may be, an amount equal to the purchase price of the Notes or Pari Passu Notes so validly tendered and not properly withdrawn by such holder or lender, as the case may be, and accepted by the Company for purchase, and the Company will promptly issue a new Note, and the Trustee, upon delivery of an Officers' Certificate from the Company, will authenticate and mail or deliver such new Note to such holder, in a principal amount equal to any unpurchased portion of the Note surrendered; *provided* that each such new Note will be in a principal amount of $1,000 or an integral multiple of $1,000. In addition, the Company will take any and all other actions required by the agreements governing the Pari Passu Notes. Any Note not so accepted will be promptly mailed or delivered by the Company to the holder thereof. The Company will publicly announce the results of the Asset Disposition Offer on the Asset Disposition Purchase Date.

The Company will not, and will not permit any Restricted Subsidiary to, engage in any Asset Swaps, *unless*:

(1) at the time of entering into such Asset Swap and immediately after giving effect to such Asset Swap, no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof; and

(2) the Board of Directors has determined that the aggregate fair market value of the property or assets being transferred by the Company or such Restricted Subsidiary is not greater than the aggregate fair market value of the property or assets being received by the Company or such Restricted Subsidiary and has approved the terms of such Asset Swap.

The Company will comply, to the extent applicable, with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to the Indenture. To the extent that the provisions of any securities laws or regulations conflict with provisions of this covenant, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Indenture by virtue of any conflict.

Limitation on affiliate transactions

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or conduct any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Company (an "Affiliate Transaction") *unless*:

(1) the terms of such Affiliate Transaction are no less favorable to the Company or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable transaction at the time of such transaction in arm's length dealings with a Person who is not such an Affiliate;

(2) in the event such Affiliate Transaction involves an aggregate consideration in excess of $5.0 million, the terms of such transaction have been approved by a majority of the members of the Board of Directors of the Company and either (x) a further resolution by a majority of

the members of such Board having no personal stake in such transaction, if any (and such majority or majorities, as the case may be, determines that such Affiliate Transaction satisfies the criteria in clause (1) above); or (y) the Company shall have received a written opinion from an independent investment banking, accounting or appraisal firm of nationally recognized standing that such Affiliate Transaction is not materially less favorable than those that might reasonably have been obtained in a comparable transaction at such time on an arm's length basis from a Person that is not an Affiliate; and

(3) in the event such Affiliate Transaction involves an aggregate consideration in excess of $15.0 million, the Company has received a written opinion from an independent investment banking, accounting or appraisal firm of nationally recognized standing that such Affiliate Transaction is not materially less favorable than those that might reasonably have been obtained in a comparable transaction at such time on an arm's length basis from a Person that is not an Affiliate.

The preceding paragraph will not apply to:

(1) any Restricted Payment permitted to be made pursuant to the covenant described under "—Limitation on restricted payments" or any Permitted Investment (other than Permitted Investments set forth under clauses (1)(b), (2), (11), (13) and (14) of the definition of Permitted Investments);

(2) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements and other compensation arrangements, options to purchase Capital Stock of the Company, restricted stock plans, long-term incentive plans, stock appreciation rights plans, participation plans or similar employee benefits plans and/or indemnity provided on behalf of directors, officers and employees approved by the Board of Directors of the Company;

(3) to the extent permitted by applicable law, loans or advances to employees, officers or directors in the ordinary course of business of the Company or any of its Restricted Subsidiaries but in any event not to exceed $2.5 million in the aggregate outstanding at any one time (without giving effect to the forgiveness of any such loan) with respect to all loans or advances made since the Issue Date;

(4) any transaction between the Company and a Restricted Subsidiary or between Restricted Subsidiaries and Guarantees issued by the Company or a Restricted Subsidiary for the benefit of the Company or a Restricted Subsidiary, as the case may be, in accordance with "—Certain covenants—Limitations on indebtedness";

(5) the payment of reasonable and customary fees paid to, and indemnity provided on behalf of, directors of the Company or any Restricted Subsidiary;

(6) the existence of, and the performance of obligations of the Company or any of its Restricted Subsidiaries under the terms of any agreement to which the Company or any of its Restricted Subsidiaries is a party as of or on the Issue Date, as these agreements may be amended, modified, supplemented, extended or renewed from time to time; *provided*, *however*, that any future amendment, modification, supplement, extension or renewal entered into after the Issue Date will be permitted to the extent that its terms are not more disadvantageous to the holders of the Notes than the terms of the agreements in effect on the Issue Date;

(7) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, in each case in the ordinary course of the business of the Company and its Restricted Subsidiaries and otherwise in compliance with the terms of the Indenture; *provided* that in the reasonable determination of the members of the Board of Directors or senior management of

the Company, such transactions are on terms that are no less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person;

(8) any issuance or sale of Equity Interests (other than Disqualified Stock) to Affiliates of the Company and the granting of registration and other customary rights in connection therewith;

(9) Permitted Holdings Payments; and

(10) any transaction on arm's length terms with non-affiliates that become Affiliates as a result of such transaction.

SEC reports

Notwithstanding that the Company may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, to the extent permitted by the Exchange Act, the Company will file with the SEC, and make available to the Trustee and the registered holders of the Notes, the annual reports and the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) that are specified in Sections 13 and 15(d) of the Exchange Act within the time periods specified therein. In the event that the Company is not permitted to file such reports, documents and information with the SEC pursuant to the Exchange Act, the Company will nevertheless make available such Exchange Act information (as well as the details regarding the conference call described below) to the Trustee and the holders of the Notes as if the Company were subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act within the time periods specified therein or in the relevant forms. Unless the Company is subject to the reporting requirements of the Exchange Act, the Company will also hold a quarterly conference call for the holders of the Notes to discuss such financial information. The conference call will not be later than three business days from the time that the Company distributes the financial information as set forth above. The Company agrees that it will not take any action for the purpose of causing the SEC not to accept such filings.

If the Company has designated any of its Subsidiaries as Unrestricted Subsidiaries and the Consolidated EBITDA of the Unrestricted Subsidiaries taken together exceeds 10% of the Consolidated EBITDA of the Company, then the quarterly and annual financial information required by the preceding paragraph shall include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes to the financial statements and in Management's Discussion and Analysis of Results of Operations and Financial Condition, of the financial condition and results of operations of the Company and its Restricted Subsidiaries.

In addition, the Company and the Guarantors have agreed that they will make available to the holders and to securities analysts, prospective investors, upon the request of such holders, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act so long as the Notes are not freely transferable under the Securities Act. For purposes of this covenant, the Company and the Guarantors will be deemed to have furnished the reports to the Trustee and the holders of Notes as required by this covenant if it has filed such reports with the SEC via the EDGAR filing system and such reports are publicly available.

The filing requirements set forth above for the applicable period may be satisfied by the Company prior to the commencement of the exchange offer or the effectiveness of the shelf registration statement by the filing with the SEC of the exchange offer registration statement and/or shelf registration statement, and any amendments thereto, with such financial information that satisfies Regulation S-X of the Securities Act; *provided* that this paragraph shall not supersede or in any manner suspend or delay the Company's reporting obligations set forth in the first three paragraphs of this

covenant, *provided*, *further*, that at such time the Company is not required to pay any additional interest pursuant to the Registration Rights Agreement.

In the event that (1) the rules and regulations of the SEC permit the Company and any direct or indirect parent company of the Company to report at such parent entity's level on a consolidated basis and (2) such parent entity of the Company is not engaged in any business in any material respect other than incidental to its ownership, directly or indirectly of the Capital Stock of the Company, the information and reports required by the covenant may be those of such parent company on a consolidated basis.

Merger and consolidation

The Company will not consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person, *unless*:

(1) the resulting, surviving or transferee Person (the "Successor Company") will be a corporation or a limited liability company, *provided* that in the case of a merger with a limited liability company there shall be a corporate co issuer, in each case organized and existing under the laws of the United States of America, any State of the United States or the District of Columbia and the Successor Company (if not the Company) will expressly assume, by supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, all the obligations of the Company under the Notes, the Indenture and the Registration Rights Agreement;

(2) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any Subsidiary of the Successor Company as a result of such transaction as having been Incurred by the Successor Company or such Subsidiary at the time of such transaction), no Default or Event of Default shall have occurred and be continuing;

(3) immediately after giving effect to such transaction, the Successor Company would be able to Incur at least an additional $1.00 of Indebtedness pursuant to the first paragraph of the "—Limitation on indebtedness" covenant;

(4) each Guarantor (unless it is the other party to the transactions above, in which case clause (1) shall apply) shall have by supplemental indenture confirmed that its Note Guarantee shall apply to such Person's obligations in respect of the Indenture and the Notes and its obligations under the Registration Rights Agreement shall continue to be in effect; and

(5) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with the Indenture.

For purposes of this covenant, the sale, lease, conveyance, assignment, transfer, or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Company, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

The predecessor Company will be released from its obligations under the Indenture and the Successor Company will succeed to, and be substituted for, and may exercise every right and power of, the Company under the Indenture, but, in the case of a lease of all or substantially all its assets, the predecessor Company will not be released from the obligation to pay the principal of and interest on the Notes.

Although there is a limited body of case law interpreting the phrase "substantially all," there is no precise established definition of the phrase under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve "all or substantially all" of the property or assets of a Person.

Notwithstanding the preceding clause (3), (x) any Restricted Subsidiary may consolidate with, merge into or transfer all or part of its properties and assets to the Company and (y) the Company may merge with an Affiliate incorporated solely for the purpose of reincorporating the Company in another jurisdiction to realize tax benefits; *provided* that, in the case of a Restricted Subsidiary that merges into the Company, the Company will not be required to comply with the preceding clause (5).

In addition, the Company will not permit any Guarantor to consolidate with, merge with or into any Person (other than another Guarantor) and will not permit the conveyance, transfer or lease of all or substantially all of the assets of any Guarantor to any person (other than to another Guarantor) *unless*:

(1) (a) if such entity remains a Guarantor, the resulting, surviving or transferee Person will be a corporation, partnership, trust or limited liability company organized and existing under the laws of the United States of America, any State of the United States or the District of Columbia; (b) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the resulting, surviving or transferee Person or any Restricted Subsidiary as a result of such transaction as having been Incurred by such Person or such Restricted Subsidiary at the time of such transaction), no Default of Event of Default shall have occurred and be continuing; and (c) the Company will have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with the Indenture; and

(2) the transaction is made in compliance with the covenant described under "—Limitation on sales of assets and subsidiary stock" (it being understood that only such portion of the Net Available Cash as is required to be applied on the date of such transaction in accordance with the terms of the Indenture needs to be applied in accordance therewith at such time) and this "—Merger and consolidation" covenant.

Future guarantors

After the Issue Date, the Company will cause each Restricted Subsidiary, other than a Foreign Subsidiary, created or acquired by the Company or one or more of its Restricted Subsidiaries to execute and deliver to the Trustee a Note Guarantee within 10 Business Days of the date on which it was acquired or created pursuant to which such Guarantor will unconditionally Guarantee, on a joint and several basis, the full and prompt payment of the principal of, premium, if any and interest on the Notes on a senior basis.

The obligations of each Guarantor will be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor (including, without limitation, any guarantees under the Credit Facility) and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Note Guarantee or pursuant to its contribution obligations under the Indenture, result in the obligations of such Guarantor under its Note Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law.

Each Note Guarantee shall be released in accordance with the provisions of the Indenture described under "—Note Guarantees."

Limitation on lines of business

The Company will not, and will not permit any Restricted Subsidiary to, engage in any business other than a Related Business, except to such extent as would not be material to the Company as a whole.

Payments for consent

Neither the Company nor any of the Company's Restricted Subsidiaries will, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fees or otherwise, to any holder of any Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes unless such consideration is offered to be paid or is paid to all holders of the Notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or amendment.

Events of default

Each of the following is an Event of Default:

(1) default in any payment of interest or additional interest (as required by the Registration Rights Agreement) on any Note when due, that continues for 30 days;

(2) default in the payment of principal of or premium, if any, on any Note when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise;

(3) failure by the Company or any Guarantor to comply with its obligations under "—Certain covenants—Merger and consolidation";

(4) failure by the Company to comply for 30 days after notice as provided below with any of its obligations under the covenants described under "—Change of control" above or under the covenants described under "—Certain covenants—Limitation on sales of assets and subsidiary stock" above (in each case, other than a failure to purchase Notes which will constitute an Event of Default under clause (2) above);

(5) failure by the Company or any Restricted Subsidiary to comply for 60 days after notice as provided below with its other agreements contained in the Indenture;

(6) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries), other than Indebtedness owed to the Company or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists, or is created after the date of the Indenture, which default:

(a) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the grace period provided in such Indebtedness ("payment default"); or

(b) results in the acceleration of such Indebtedness prior to its maturity (the "cross-acceleration provision");

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a payment default or the maturity of which has been so accelerated, aggregates $15.0 million or more;

(7) certain events of bankruptcy, insolvency or reorganization of the Company or a Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary (the "bankruptcy provisions");

(8) failure by the Company or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary to pay final judgments aggregating in excess of $15.0 million (net of any amounts that a reputable and creditworthy insurance company has acknowledged liability for in writing), which judgments are not paid, discharged or stayed for a period of 60 days (the "judgment default provision"); or

(9) any Note Guarantee ceases to be in full force and effect (except as contemplated by the terms of the Indenture) or is declared null and void in a judicial proceeding or any Guarantor denies or disaffirms its obligations under the Indenture or its Note Guarantee.

However, a default under clauses (4) and (5) of this paragraph will not constitute an Event of Default until the Trustee or the holders of 25% in principal amount of the outstanding Notes notify the Company of the default and the Company does not cure such default within the time specified in clauses (4) and (5) of this paragraph after receipt of such notice.

If an Event of Default (other than an Event of Default described in clause (7) above) occurs and is continuing, the Trustee by notice to the Company, or the holders of at least 25% in principal amount of the outstanding Notes by notice to the Company and the Trustee, may, and the Trustee at the request of such holders shall, declare the principal of, premium, if any, and accrued and unpaid interest, if any, on all the Notes to be due and payable. Upon such a declaration, such principal, premium and accrued and unpaid interest will be due and payable immediately. In the event of a declaration of acceleration of the Notes because an Event of Default described in clause (6) under "Events of default" has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically annulled if the event of default or payment default triggering such Event of Default pursuant to clause (6) shall be remedied or cured by the Company or a Restricted Subsidiary or waived by the holders of the relevant Indebtedness within 30 days after the declaration of acceleration with respect thereto and if (1) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, except nonpayment of principal, premium or interest on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived. If an Event of Default described in clause (7) above occurs and is continuing, the principal of, premium, if any, and accrued and unpaid interest on all the Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any holders. The holders of a majority in principal amount of the outstanding Notes may waive all past defaults (except with respect to nonpayment of principal, premium or interest) and rescind any such acceleration with respect to the Notes and its consequences if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, other than the nonpayment of the principal of, premium, if any, and interest on the Notes that have become due solely by such declaration of acceleration, have been cured or waived.

Subject to the provisions of the Indenture relating to the duties of the Trustee, if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under the Indenture at the request or direction of any of the holders unless such holders have offered to the Trustee reasonable indemnity or security against any loss, liability or expense. Except to enforce the right to receive payment of principal, premium, if any, or interest when due, no holder may pursue any remedy with respect to the Indenture or the Notes *unless*:

(1) such holder has previously given the Trustee notice that an Event of Default is continuing;

(2) holders of at least 25% in principal amount of the outstanding Notes have requested the Trustee to pursue the remedy;

(3) such holders have offered the Trustee reasonable security or indemnity against any loss, liability or expense;

(4) the Trustee has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity; and

(5) the holders of a majority in principal amount of the outstanding Notes have not given the Trustee a direction that, in the opinion of the Trustee, is inconsistent with such request within such 60 day period.

Subject to certain restrictions, the holders of a majority in principal amount of the outstanding Notes are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Indenture provides that in the event an Event of Default has occurred and is continuing, the Trustee will be required in the exercise of its powers to use the degree of care that a prudent person would use in the conduct of its own affairs. The Trustee, however, may refuse to follow any direction that conflicts with law or the Indenture or that the Trustee determines is unduly prejudicial to the rights of any other holder or that would involve the Trustee in personal liability. Prior to taking any action under the Indenture, the Trustee will be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

The Indenture provides that if a Default or Event of Default occurs and is continuing and is known to the Trustee, the Trustee must mail to each holder notice of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or Event of Default in the payment of principal of, premium, if any, or interest on any Note, the Trustee may withhold notice if and so long as a committee of trust officers of the Trustee in good faith determines that withholding notice is in the interests of the holders. In addition, the Company is required to deliver to the Trustee, within 120 days after the end of each fiscal year, a certificate indicating whether the signers thereof know of any Default or Event of Default that occurred during the previous year. The Company also is required to deliver to the Trustee, within 30 days after the occurrence thereof, written notice of any events which would constitute certain Defaults, their status and what action the Company is taking or proposing to take in respect thereof.

Amendments and waivers

Subject to certain exceptions, the Indenture and the Notes may be amended or supplemented with the consent of the holders of a majority in principal amount of the Notes then outstanding (including without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) and, subject to certain exceptions, any past default or compliance with any provisions may be waived with the consent of the holders of a majority in principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes). However, without the consent of each holder of an outstanding Note affected, no amendment, supplement or waiver may, among other things (with respect to any Notes held by a non-consenting holder)

(1) reduce the amount of Notes whose holders must consent to an amendment;

(2) reduce the stated rate of or extend the stated time for payment of interest on any Note;

(3) reduce the principal of or extend the Stated Maturity of any Note;

(4) reduce the premium payable upon the redemption of any Note or change the time at which any Note may be redeemed as described above under "—Optional redemption," or "—Certain

covenants—Limitation on sales of assets and subsidiary stock," whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;

(5) make any Note payable in money other than that stated in the Note;

(6) impair the right of any holder to receive payment of principal, premium, if any, and interest on such holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such holder's Notes;

(7) make any change in the amendment provisions which require each holder's consent or in the waiver provisions; or

(8) modify the Note Guarantees in any manner adverse to the holders of the Notes.

Notwithstanding the foregoing, without the consent of any holder, the Company, the Guarantors and the Trustee may amend the Indenture and the Notes to:

(1) cure any ambiguity, omission, defect, mistake or inconsistency;

(2) provide for the assumption by a successor entity of the obligations of the Company or any Guarantor under the Indenture;

(3) provide for uncertificated Notes in addition to or in place of certificated Notes (*provided* that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the Code);

(4) add Guarantees with respect to the Notes or release a Guarantor upon its designation as an Unrestricted Subsidiary; *provided*, *however*, that the designation is in accord with the applicable provisions of the Indenture;

(5) secure the Notes;

(6) add to the covenants of the Company for the benefit of the holders or surrender any right or power conferred upon the Company;

(7) provide additional rights or benefits of the Holders of the Notes or make any change that does not adversely affect the rights of any holder;

(8) comply with any requirement of the SEC in connection with the qualification of the Indenture under the Trust Indenture Act;

(9) release a Guarantor from its obligations under its Note Guarantee or the Indenture in accordance with the applicable provisions of the Indenture;

(10) provide for the appointment of a successor trustee; *provided* that the successor trustee is otherwise qualified and eligible to act as such under the terms of the Indenture;

(11) provide for the issuance of exchange securities which shall have terms substantially identical in all respects to the Notes (except that the transfer restrictions contained in the Notes shall be modified or eliminated as appropriate) and which shall be treated, together with any outstanding Notes, as a single class of securities; or

(12) to conform the text of the Indenture, the Notes or the Note Guarantees to any provision of this Description of notes to the extent that such provision in this Description of notes was intended to be a verbatim recitation of a provision of the Indenture, the Notes or the Note Guarantees.

The consent of the holders is not necessary under the Indenture to approve the particular form of any proposed amendment or supplement. It is sufficient if such consent approves the substance of the

proposed amendment or supplement. A consent to any amendment, supplement or waiver under the Indenture by any holder of Notes given in connection with a tender of such holder's Notes will not be rendered invalid by such tender. After an amendment or supplement under the Indenture becomes effective, the Company is required to mail to the holders a notice briefly describing such amendment or supplement. However, the failure to give such notice to all the holders, or any defect in the notice will not impair or affect the validity of the amendment or supplement.

Defeasance

The Company at any time may terminate all its obligations under the Notes and the Indenture ("legal defeasance"), except for certain obligations, including those respecting the defeasance trust and obligations to register the transfer or exchange of the Notes, to replace mutilated, destroyed, lost or stolen Notes and to maintain a registrar and paying agent in respect of the Notes. If the Company exercises its legal defeasance option, the Note Guarantees in effect at such time will terminate.

The Company at any time may terminate its obligations described under "—Change of control" and under the covenants described under "—Certain covenants" (other than "—Merger and consolidation"), the operation of the cross default upon a payment default, cross-acceleration provisions, the bankruptcy provisions with respect to Significant Subsidiaries, the judgment default provision and the Note Guarantee provision described under "Events of default" above and the limitations contained in clause (3) under "—Certain covenants—Merger and consolidation" above ("covenant defeasance").

The Company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option. If the Company exercises its legal defeasance option, payment of the Notes may not be accelerated because of an Event of Default with respect to the Notes. If the Company exercises its covenant defeasance option, payment of the Notes may not be accelerated because of an Event of Default specified in clause (4), (5), (6), (7) (with respect only to Significant Subsidiaries), (8) or (9) under "—Events of default" above or because of the failure of the Company to comply with clause (3) and clause (4) under "—Certain covenants—Merger and consolidation" above.

In order to exercise either defeasance option, the Company must irrevocably deposit in trust (the "defeasance trust") with the Trustee money or U.S. Government Obligations for the payment of principal, premium, if any, and interest on the Notes to redemption or maturity, as the case may be, and must comply with certain other conditions, including delivery to the Trustee of an Opinion of Counsel (subject to customary exceptions and exclusions) to the effect that holders of the Notes will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and defeasance and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred. In the case of legal defeasance only, such Opinion of Counsel must be based on a ruling of the Internal Revenue Service or other change in applicable federal income tax law. Further, no Default or Event of Default must have occurred or be continuing on the date of the deposit (other than a Default or Event of Default resulting from the borrowing of funds applied to such deposit).

No personal liability of directors, officers, employees and stockholders

No director, officer, employee, incorporator or stockholder of the Company or any Guarantor, as such, shall have any liability for any obligations of the Company under the Notes, or the Indenture or the Note Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

Concerning the Trustee

The Bank of New York is the Trustee under the Indenture and has been appointed by the Company as Registrar and Paying Agent with regard to the Notes.

Governing law

The Indenture provides that it and the Notes will be governed by, and construed in accordance with, the laws of the State of New York.

Certain definitions

"*Acquired Indebtedness*" means Indebtedness (i) of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary or (ii) assumed in connection with the acquisition of assets from such Person, in each case whether or not Incurred by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Restricted Subsidiary or such acquisition. Acquired Indebtedness shall be deemed to have been Incurred, with respect to clause (i) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary and, with respect to clause (ii) of the preceding sentence, on the date of consummation of such acquisition of assets; provided, however, that Indebtedness of such acquired Person or assumed in connection with such acquisition of assets that is redeemed, defeased, retired or otherwise repaid at the time of or immediately upon consummation of the transactions by which such Person merges with or into or becomes a Restricted Subsidiary of such Person or such assets are acquired shall not be Acquired Indebtedness.

"*Additional Assets*" means:

(1) any assets (other than assets that are qualified as current assets under GAAP), property, plant or equipment (excluding working capital for the avoidance of doubt) to be used by the Company or a Restricted Subsidiary in a Related Business;

(2) assets (other than assets that are qualified as current assets under GAAP), property and/or the Capital Stock of a Person that becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Company or a Restricted Subsidiary;

(3) Capital Stock constituting a minority interest in any Person that at such time is a Restricted Subsidiary; or

(4) capital expenditures used or useful in a Related Business,

provided, *however*, that, in the case of clauses (2) and (3), such Restricted Subsidiary is primarily engaged in a Related Business.

"*Affiliate*" of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"*Asset Disposition*" means any direct or indirect sale, lease (other than an operating lease entered into in the ordinary course of business), transfer, issuance or other disposition, or a series of related sales, leases, transfers, issuances or dispositions that are part of a common plan, of shares of Capital Stock of a Subsidiary (other than directors' qualifying shares), property or other assets (each referred to for the purposes of this definition as a "disposition") by the Company or any of its Restricted Subsidiaries, including any disposition by means of a merger, consolidation or similar transaction.

Notwithstanding the preceding, the following items shall not be deemed to be Asset Dispositions:

(1) a disposition of assets by a Restricted Subsidiary to the Company or by the Company or a Restricted Subsidiary to a Restricted Subsidiary;

(2) the sale or other disposition of cash or Cash Equivalents in the ordinary course of business;

(3) the sale, lease, discount of products, services or accounts receivable in the ordinary course of business, including a disposition of inventory in the ordinary course of business;

(4) a disposition of damaged, obsolete or worn out equipment or equipment that is no longer useful in the conduct of the business of the Company and its Restricted Subsidiaries and that is disposed of in each case in the ordinary course of business;

(5) transactions permitted under "—Certain covenants—Merger and consolidation" or any disposition that constitutes a Change of Control;

(6) an issuance of Equity Interests by a Restricted Subsidiary to the Company or to a Wholly-Owned Subsidiary;

(7) for purposes of "—Certain covenants—Limitation on sales of assets and subsidiary stock" only, (a) the making of a Permitted Investment (*provided* that any cash or Cash Equivalents received in such Asset Disposition shall be treated as Net Available Cash) or (b) a disposition subject to "—Certain covenants—Limitation on restricted payments";

(8) an Asset Swap effected in compliance with "—Certain covenants—Limitation on sales of assets and subsidiary stock";

(9) dispositions of assets in a single transaction or series of related transactions with an aggregate fair market value of less than $1.0 million;

(10) the creation of a Permitted Lien and dispositions in connection with Permitted Liens;

(11) dispositions of Investments or receivables, in each case in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;

(12) the issuance by a Restricted Subsidiary of Preferred Stock that is permitted by the covenant described under the caption "—Certain covenants—Limitation on indebtedness";

(13) the licensing or sublicensing of intellectual property or other general intangibles and licenses, leases or subleases of other property in the ordinary course of business which do not materially interfere with the business of the Company and its Restricted Subsidiaries;

(14) the unwinding of any Hedging Obligations;

(15) the sale of Permitted Investments (other than sales of Equity Interests of any of the Company's Restricted Subsidiaries) made by the Company or any Restricted Subsidiary after the Issue Date, if such Permitted Investments were (a) received in exchange for, or purchased out of the Net Cash Proceeds of the substantially concurrent sale (other than to a Subsidiary of the Company) of, Equity Interests of the Company (other than Disqualified Stock) or (b) received in the form of, or were purchased from the proceeds of, a substantially concurrent contribution of common equity capital to the Company; provided that any such proceeds or contributions in clauses (a) and (b) will be excluded from clause (c)(ii) of the first paragraph under "—Limitation on restricted payments";

(16) foreclosure on assets; and

(17) the sale or other Investment of Equity Interests of, or any Investment in, any Unrestricted Subsidiary.

"*Asset Swap*" means concurrent purchase and sale or exchange of Related Business Assets between the Company or any of its Restricted Subsidiaries and another Person; *provided* that any cash received must be applied in accordance with "—Limitation on Sales of Assets and Subsidiary Stock."

"*Attributable Indebtedness*" in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value (discounted at the interest rate implicit in the transaction) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended), determined in accordance with GAAP; *provided, however*, that if such Sale/Leaseback Transaction results in a Capitalized Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of "Capitalized Lease Obligations."

"*Average Life*" means, as of the date of determination, with respect to any Indebtedness or Preferred Stock, the quotient obtained by dividing (1) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Preferred Stock multiplied by the amount of such payment by (2) the sum of all such payments.

"*Board of Directors*" means, as to any Person, the board of directors or managers, as applicable, of such Person (or, if such Person is a partnership, the board of directors or other governing body of the general partner or such Person) or any duly authorized committee thereof.

"*Business Day*" means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York are authorized or required by law to close.

"*Capital Stock*" of any Person means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible or exchangeable into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock, including, in each case, Preferred Stock.

"*Capitalized Lease Obligations*" means an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes in accordance with GAAP, and the amount of Indebtedness represented by such obligation will be the capitalized amount of such obligation at the time any determination thereof is to be made as determined in accordance with GAAP, and the Stated Maturity thereof will be the date of the last payment of rent or any other amount due under such lease prior to the first date such lease may be terminated without penalty.

"*Cash Equivalents*" means:

(1) securities issued or directly and fully guaranteed or insured by the United States Government or any agency or instrumentality of the United States (provided that the full faith and credit of the United States is pledged in support thereof), having maturities of not more than one year from the date of acquisition;

(2) marketable general obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition and, at the time of acquisition, having a credit rating of "A" or better from either Standard & Poor's Ratings Services or Moody's Investors Service, Inc.;

(3) certificates of deposit, time deposits, Eurodollar time deposits, overnight bank deposits or bankers' acceptances having maturities of not more than one year from the date of acquisition thereof issued by any commercial bank the long-term debt of which is rated at the time of acquisition thereof at least "A" or the equivalent thereof by Standard & Poor's Ratings Services, or "A" or the equivalent thereof by Moody's Investors Service, Inc., and having combined capital and surplus in excess of $500 million;

(4) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (1), (2) and (3) entered into with any bank meeting the qualifications specified in clause (3) above;

(5) commercial paper rated at the time of acquisition thereof at least "A 2" or the equivalent thereof by Standard & Poor's Ratings Services or "P 2" or the equivalent thereof by Moody's Investors Service, Inc., or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of investments, and in any case maturing within one year after the date of acquisition thereof; and

(6) interests in any investment company or money market fund which invests 95% or more of its assets in instruments of the type specified in clauses (1) through (5) above.

"*Change of Control*" means the occurrence of any of the following:

(1) the Company becomes aware that any "person" or "group" of related persons (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than one or more Permitted Holders has become the beneficial owner (as defined in Rules 13d 3 and 13d 5 under the Exchange Act, except that such person or group shall be deemed to have "beneficial ownership" of all shares that any such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Company or Holdings (or its successor by merger, consolidation or purchase of all or substantially all of its assets) (for the purposes of this clause, such person or group shall be deemed to beneficially own any Voting Stock of the Company or Holdings held by a parent entity, if such person or group "beneficially owns" (as defined above), directly or indirectly, more than 50% of the voting power of the Voting Stock of such parent entity); or

(2) the first day on which a majority of the members of the Board of Directors of the Company or Holdings are not Continuing Directors; or

(3) the sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of Holdings' or the Company's and its Restricted Subsidiaries taken as a whole to any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) other than a Permitted Holder; or

(4) the adoption by the stockholders of the Company or Holdings of a plan or proposal for the liquidation or dissolution of the Company or Holdings.

"*Code*" means the Internal Revenue Code of 1986, as amended.

"*Commodity Agreement*" means any commodity futures contract, commodity option or other similar agreement or arrangement entered into by the Company or any Restricted Subsidiary designed to protect the Company or any Restricted Subsidiaries against fluctuations in the price of commodities actually used in the ordinary course of business of the Company and its Restricted Subsidiaries.

"*Common Stock*" means with respect to any Person, any and all shares, interest or other participations in, and other equivalents (however designated and whether voting or nonvoting) of such Person's common stock whether or not outstanding on the Issue Date, and includes, without limitation, all series and classes of such common stock.

"*Consolidated Coverage Ratio*" means as of any date of determination, with respect to any Person, the ratio of (x) the aggregate amount of Consolidated EBITDA of such Person for the period of the most recent four consecutive fiscal quarters ending prior to the date of such determination for which financial statements are in existence to (y) Consolidated Interest Expense for such four fiscal quarters, *provided*, *however*, that:

(1) if the Company or any Restricted Subsidiary:

(a) has Incurred any Indebtedness since the beginning of such period that remains outstanding on such date of determination or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio is an Incurrence of Indebtedness, Consolidated EBITDA and Consolidated Interest Expense for such period will be calculated after giving effect on a pro forma basis to such Indebtedness as if such Indebtedness had been Incurred on the first day of such period (except that in making such computation, the amount of Indebtedness under any revolving credit facility outstanding on the date of such calculation will be deemed to be (i) the average daily balance of such Indebtedness during such four fiscal quarters or such shorter period for which such facility was outstanding or (ii) if such facility was created after the end of such four fiscal quarters, the average daily balance of such Indebtedness during the period from the date of creation of such facility to the date of such calculation) and the discharge of any other Indebtedness repaid, repurchased, defeased or otherwise discharged with the proceeds of such new Indebtedness as if such discharge had occurred on the first day of such period; or

(b) has repaid, repurchased, defeased or otherwise discharged any Indebtedness since the beginning of the period that is no longer outstanding on such date of determination or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio involves a discharge of Indebtedness (in each case other than Indebtedness Incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and the related commitment terminated), Consolidated EBITDA and Consolidated Interest Expense for such period will be calculated after giving effect on a pro forma basis to such repayment, repurchase, defeasance or other discharge of such Indebtedness, including with the proceeds of such new Indebtedness, as if such discharge had occurred on the first day of such period;

(2) if since the beginning of such period the Company or any Restricted Subsidiary will have made any Asset Disposition or disposed of any company, division, operating unit, segment, business, group of related assets or line of business or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio is such an Asset Disposition:

(a) the Consolidated EBITDA for such period will be reduced by an amount equal to the Consolidated EBITDA (if positive) directly attributable to the assets which are the subject of such disposition for such period or increased by an amount equal to the Consolidated EBITDA (if negative) directly attributable thereto for such period; and

(b) Consolidated Interest Expense for such period will be reduced by an amount equal to the Consolidated Interest Expense directly attributable to any Indebtedness of the Company or any Restricted Subsidiary repaid, repurchased, defeased or otherwise discharged (including, but not limited to, through the assumption of such Indebtedness by another Person if the Company and its Restricted Subsidiaries are no longer liable for such Indebtedness after the assumption thereof) with respect to the Company and its continuing Restricted Subsidiaries in connection with such disposition for such period (or, if the Capital Stock of any Restricted Subsidiary is sold, the Consolidated Interest Expense for such period directly attributable to the Indebtedness of such Restricted Subsidiary to the extent the Company and its continuing Restricted Subsidiaries are no longer liable for such Indebtedness after such sale);

(3) if since the beginning of such period the Company or any Restricted Subsidiary (by merger or otherwise) will have made an Investment in any Restricted Subsidiary (or any Person which becomes a Restricted Subsidiary or is merged with or into the Company) or an acquisition of assets, including any acquisition of assets occurring in connection with a transaction causing a calculation to be made hereunder, which constitutes all or substantially all of a company, division, operating unit, segment, business, group of related assets or line of business, Consolidated EBITDA (plus adjustments which will only include annualized cost savings achievable within 180 days and which shall be itemized in an Officer's Certificate delivered to the Trustee by the chief financial officer of the Company) and Consolidated Interest Expense for such period will be calculated after giving pro forma effect thereto (including the Incurrence of any Indebtedness) as if such Investment or acquisition occurred on the first day of such period; and

(4) if since the beginning of such period any Person (that subsequently became a Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary since the beginning of such period) will have Incurred any Indebtedness or discharged any Indebtedness, made any Asset Disposition or any Investment or acquisition of assets that would have required an adjustment pursuant to clause (2) or (3) above if made by the Company or a Restricted Subsidiary during such period, Consolidated EBITDA and Consolidated Interest Expense for such period will be calculated after giving pro forma effect thereto as if such transaction occurred on the first day of such period.

For purposes of this definition, whenever pro forma effect is to be given to any calculation under this definition, the pro forma calculations will be determined in good faith by a responsible financial or accounting officer of the Company (including pro forma expense and cost reductions calculated on a basis consistent with Regulation S X under the Securities Act). If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest expense on such Indebtedness will be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Interest Rate Agreement applicable to such Indebtedness if such Interest Rate Agreement has a remaining term in excess of 12 months). If any Indebtedness that is being given pro forma effect bears an interest rate at the option of the Company or any Restricted Subsidiary, the interest rate shall be calculated by applying such optional rate chosen by the Company or such Restricted Subsidiary.

"*Consolidated EBITDA*" for any period means, without duplication, the Consolidated Net Income for such period, plus the following to the extent deducted in calculating such Consolidated Net Income:

(1) Consolidated Interest Expense; plus

(2) Consolidated Income Taxes; plus

(3) consolidated depreciation expense; plus

(4) consolidated amortization expense or impairment charges recorded in connection with the application of Financial Accounting Standard No. 142 "Goodwill and Other Intangibles" and Financial Accounting Standard No. 144 "Accounting for the Impairment or Disposal of Long Lived Assets;" plus

(5) other non cash charges reducing Consolidated Net Income (excluding any such non cash charge to the extent it represents an accrual of or reserve for cash charges in any future period or amortization of a prepaid cash expense that was paid in a prior period not included in the calculation); plus

(6) fees, expenses and charges resulting from the Transactions described in this prospectus; plus

(7) the aggregate amount of cash Preopening Costs incurred during such period in an aggregate amount not to exceed $3.0 million in any period; plus

(8) payments made pursuant to the Expense Reimbursement Agreement as in effect on the Issue Date; less

(9) noncash items increasing Consolidated Net Income of such Person for such period (excluding any items which represent the reversal of any accrual of, or reserve for, anticipated cash charges made in any prior period).

Notwithstanding the preceding sentence, clauses (2) through (5), (7) and (9) relating to amounts of a Restricted Subsidiary of a Person will be added to Consolidated Net Income to compute Consolidated EBITDA of such Person only to the extent (and in the same proportion) that the net income (loss) of such Restricted Subsidiary was included in calculating the Consolidated Net Income of such Person and, to the extent the amounts set forth in clauses (2) through (5), (7) and (9) are in excess of those necessary to offset a net loss of such Restricted Subsidiary or if such Restricted Subsidiary has net income for such period included in Consolidated Net Income, only if a corresponding amount would be permitted at the date of determination to be dividended to the Company by such Restricted Subsidiary without prior approval (that has not been obtained), pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to that Restricted Subsidiary or its stockholders.

"*Consolidated Income Taxes*" means, with respect to any Person for any period, taxes imposed upon such Person or other payments required to be made by such Person by any governmental authority which taxes or other payments are calculated by reference to the income or profits of such Person or such Person and its Restricted Subsidiaries (to the extent such income or profits were included in computing Consolidated Net Income for such period), regardless of whether such taxes or payments are required to be remitted to any governmental authority.

"*Consolidated Interest Expense*" means, for any period, the total interest expense of the Company and its consolidated Restricted Subsidiaries, whether paid or accrued, plus, to the extent not included in such interest expense:

(1) interest expense attributable to Capitalized Lease Obligations and the interest portion of rent expense associated with Attributable Indebtedness in respect of the relevant lease giving rise thereto, determined as if such lease were a capitalized lease in accordance with GAAP and the interest component of any deferred payment obligations;

(2) amortization of debt discount and debt issuance cost (*provided* that any amortization of bond premium will be credited to reduce Consolidated Interest Expense unless, pursuant to GAAP, such amortization of bond premium has otherwise reduced Consolidated Interest Expense);

(3) non cash interest expense;

(4) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing;

(5) the interest expense on Indebtedness of another Person that is Guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, whether or not such Guarantee or Lien is called upon;

(6) costs associated with Hedging Obligations (including amortization of fees) *provided*, *however*, that if Hedging Obligations result in net benefits rather than costs, such benefits shall be credited to reduce Consolidated Interest Expense unless, pursuant to GAAP, such net benefits are otherwise reflected in Consolidated Net Income;

(7) the consolidated interest expense of such Person and its Restricted Subsidiaries that was capitalized during such period;

(8) the product of (a) all dividends paid or payable, in cash, Cash Equivalents or Indebtedness or accrued during such period on any series of Disqualified Stock of such Person or on Preferred Stock of its Restricted Subsidiaries that are not Guarantors payable to a party other than the Company or a Wholly-Owned Subsidiary, times (b) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state, provincial and local statutory tax rate of such Person, expressed as a decimal, in each case, on a consolidated basis and in accordance with GAAP;

(9) Receivables Fees; and

(10) the cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than the Company and its Restricted Subsidiaries) in connection with Indebtedness Incurred by such plan or trust.

For the purpose of calculating the Consolidated Coverage Ratio in connection with the Incurrence of any Indebtedness described in the final paragraph of the definition of "Indebtedness," the calculation of Consolidated Interest Expense shall include all interest expense (including any amounts described in clauses (1) through (10) above) relating to any Indebtedness of the Company or any Restricted Subsidiary described in the final paragraph of the definition of "Indebtedness."

For purposes of the foregoing, total interest expense will be determined (i) after giving effect to any net payments made or received by the Company and its Subsidiaries with respect to Interest Rate Agreements and (ii) exclusive of amounts classified as other comprehensive income in the balance sheet of the Company. Notwithstanding anything to the contrary contained herein, commissions, discounts, yield and other fees and charges Incurred in connection with any transaction pursuant to which the Company or its Restricted Subsidiaries may sell, convey or otherwise transfer or grant a security interest in any accounts receivable or related assets shall be included in Consolidated Interest Expense.

"*Consolidated Net Income*" means, for any period, the net income (loss) of the Company and its consolidated Restricted Subsidiaries determined in accordance with GAAP; *provided*, *however*, that there will not be included in such Consolidated Net Income:

(1) any net income (loss) of any Person if such Person is not a Restricted Subsidiary, except that:

(a) subject to the limitations contained in clauses (3), (4) and (5) below, the Company's equity in the net income of any such Person for such period will be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Company or a Restricted Subsidiary as a dividend or

other distribution (subject, in the case of a dividend or other distribution to a Restricted Subsidiary, to the limitations contained in clause (2) below); and

(b) the Company's equity in a net loss of any such Person (other than an Unrestricted Subsidiary) for such period will be included in determining such Consolidated Net Income to the extent such loss has been funded with cash from the Company or a Restricted Subsidiary;

(2) any net income (but not loss) of any Restricted Subsidiary if such Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Restricted Subsidiary, directly or indirectly, to the Company, except that:

(a) subject to the limitations contained in clauses (3), (4) and (5) below, the Company's equity in the net income of any such Restricted Subsidiary for such period will be included in such Consolidated Net Income up to the aggregate amount of cash that could have been distributed by such Restricted Subsidiary during such period to the Company or another Restricted Subsidiary as a dividend (subject, in the case of a dividend to another Restricted Subsidiary, to the limitation contained in this clause); and

(b) the Company's equity in a net loss of any such Restricted Subsidiary for such period will be included in determining such Consolidated Net Income;

(3) any gain (loss) realized upon the sale or other disposition of any property, plant or equipment of the Company or its consolidated Restricted Subsidiaries (including pursuant to any Sale/Leaseback Transaction) which is not sold or otherwise disposed of in the ordinary course of business and any gain (loss) realized upon the sale or other disposition of any Capital Stock of any Person;

(4) any extraordinary gain or loss; and

(5) the cumulative effect of a change in accounting principles.

Corporate overhead expenses payable by Holdings described in clause (9) of the second paragraph of the covenant described under "—Limitation on restricted payments," the funds for which are provided by the Company and/or its Restricted Subsidiaries, shall be deducted in calculating the Consolidated Net Income of the Company and its Restricted Subsidiaries.

"*Consolidated Net Tangible Assets*" means Consolidated Total Assets after deducting:

(1) all current liabilities;

(2) any item representing investments in Unrestricted Subsidiaries; and

(3) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other intangibles.

"*Consolidated Total Assets*" as of any date of determination, means the total amount of assets which would appear on a consolidated balance sheet of the Company and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP.

"*Continuing Directors*" means, as of any date of determination, any member of the Board of Directors of the Company or Holdings, as the case may be, who: (1) was a member of such Board of Directors on the date of the Indenture; or (2) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of the relevant Board at the time of such nomination or election.

"*Credit Facility*" means, with respect to the Company or any Guarantor, one or more debt facilities (including, without limitation, the Senior Secured Credit Agreement or commercial paper facilities with

banks or other institutional lenders providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables) or letters of credit, in each case, as amended, restated, modified, renewed, refunded, replaced (whether or not contemporaneously) or refinanced (including increasing the amount of available borrowings thereunder (*provided* that such increase in borrowings is permitted by the "—Limitation on indebtedness" covenant above) (including by means of sales of debt securities to institutional investors) in whole or in part from time to time (and whether or not with the original administrative agent and lenders or another administrative agent or agents or other lenders and whether provided under the original Senior Secured Credit Agreement or any other credit or other agreement or indenture).

"*Currency Agreement*" means in respect of a Person any foreign exchange contract, currency swap agreement, futures contract, option contract or other similar agreement as to which such Person is a party or a beneficiary.

"*Default*" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"*Disqualified Stock*" means, with respect to any Person, any Capital Stock of such Person which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event:

(1) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise;

(2) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock which is convertible or exchangeable solely at the option of the Company or a Restricted Subsidiary); or

(3) is redeemable at the option of the holder of the Capital Stock in whole or in part; in each case on or prior to the date that is 91 days after the earlier of the date (a) of the Stated Maturity of the Notes or (b) on which there are no Notes outstanding, provided that only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; *provided*, *further* that any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Company to repurchase such Capital Stock upon the occurrence of a change of control or asset sale (each defined in a substantially identical manner to the corresponding definitions in the Indenture) shall not constitute Disqualified Stock if the terms of such Capital Stock (and all such securities into which it is convertible or for which it is ratable or exchangeable) provide that the Company may not repurchase or redeem any such Capital Stock (and all such securities into which it is convertible or for which it is ratable or exchangeable) pursuant to such provision prior to compliance by the Company with the provisions of the Indenture described under the captions "—Change of control" and "—Limitation on sales of assets and subsidiary stock" and such repurchase or redemption complies with "—Certain covenants—Limitation on restricted payments."

"*Equity Interests*" means Capital Stock and all warrants, options, profits, interests, equity appreciation rights or other rights to acquire or purchase Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

"*Equity Offering*" means (i) an offering for cash by the Company or Holdings, as the case may be, of its Common Stock, or options, warrants or rights with respect to its Common Stock, or (ii) a cash capital contribution to the Company or any of its Restricted Subsidiaries, in each case other than (x) public offerings with respect to the Company's or Holdings', as the case may be, Common Stock, or options, warrants or rights, registered on Form S-4 or S-8, (y) an issuance to any Subsidiary or (z) any

offering of Common Stock issued in connection with a transaction that constitutes a Change of Control.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"*Expense Reimbursement Agreement*" means the Expense Reimbursement Agreement between the Company, Wellspring Capital Management LLC and HBK Investments L.P. (and their permitted successors and assigns thereunder) as in effect on the Issue Date.

"*Foreign Subsidiary*" means any Restricted Subsidiary that is not organized under the laws of the United States of America or any state thereof or the District of Columbia and any Subsidiary of such Restricted Subsidiary.

"*GAAP*" means generally accepted accounting principles in the United States of America as in effect as of the date of the Indenture, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession. All ratios and computations based on GAAP contained in the Indenture will be computed in conformity with GAAP.

"*Guarantee*" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep well, to purchase assets, goods, securities or services, to take or pay, or to maintain financial statement conditions or otherwise); or

(2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided, however, that the term "Guarantee" will not include endorsements for collection or deposit in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

"*Guarantor*" means each Restricted Subsidiary (other than Foreign Subsidiaries) in existence on the Issue Date that provides a Note Guarantee on the Issue Date (and any other Restricted Subsidiary that provides a Note Guarantee in accordance with the Indenture); provided that upon release or discharge of such Restricted Subsidiary from its Note Guarantee in accordance with the Indenture, such Restricted Subsidiary shall cease to be a Guarantor.

"*Guarantor Pari Passu Indebtedness*" means Indebtedness of a Guarantor that ranks equally in right of payment to its Note Guarantee.

"*Guarantor Subordinated Obligation*" means, with respect to a Guarantor, any Indebtedness of such Guarantor (whether outstanding on the Issue Date or thereafter Incurred) which is expressly subordinated in right of payment to the obligations of such Guarantor under its Note Guarantee pursuant to a written agreement.

"*Hedging Obligations*" of any Person means the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodity Agreement.

"*holder*" means a Person in whose name a Note is registered on the Registrar's books.

"*Holdings*" means WS Midway Holdings, Inc., a Delaware corporation.

"*Incur*" means issue, create, assume, Guarantee, incur or otherwise become liable for; *provided*, *however*, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary; and the terms "Incurred" and "Incurrence" have meanings correlative to the foregoing.

"*Indebtedness*" means, with respect to any Person on any date of determination (without duplication):

(1) the principal of and premium (if any) in respect of indebtedness of such Person for borrowed money;

(2) the principal of and premium (if any) in respect of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(3) the principal component of all obligations of such Person in respect of letters of credit, bankers' acceptances or other similar instruments (including reimbursement obligations with respect thereto except to the extent such reimbursement obligation relates to a trade payable and such obligation is satisfied within 30 days of Incurrence);

(4) the principal component of all obligations of such Person to pay the deferred and unpaid purchase price of property (except trade payables), which purchase price is due more than six months after the date of placing such property in service or taking delivery and title thereto;

(5) Capitalized Lease Obligations and all Attributable Indebtedness of such Person;

(6) the principal component or liquidation preference of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock or, with respect to any Subsidiary that is not a Guarantor, any Preferred Stock;

(7) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; *provided*, *however*, that the amount of such Indebtedness will be the lesser of (a) the fair market value of such asset at such date of determination and (b) the amount of such Indebtedness of such other Persons;

(8) the principal component of Indebtedness of other Persons to the extent Guaranteed by such Person; and

(9) to the extent not otherwise included in this definition, net obligations of such Person under Hedging Obligations (the amount of any such obligations to be equal at any time to the termination value of such agreement or arrangement giving rise to such obligation that would be payable by such Person at such time).

The amount of Indebtedness of any Person at any date will be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date. Notwithstanding the foregoing, money borrowed and set aside at the time of the Incurrence of any Indebtedness in order to pre-fund the payment of interest on such Indebtedness shall not be deemed to be "Indebtedness" provided that such money is held to secure the payment of such interest.

In addition, "Indebtedness" of any Person shall include Indebtedness described in the preceding paragraph that would not appear as a liability on the balance sheet of such Person if:

(1) such Indebtedness is the obligation of a partnership or joint venture that is not a Restricted Subsidiary (a "Joint Venture");

(2) such Person or a Restricted Subsidiary of such Person is a general partner of the Joint Venture (a "General Partner"); and

(3) there is recourse, by contract or operation of law, with respect to the payment of such Indebtedness to property or assets of such Person or a Restricted Subsidiary of such Person; and then such Indebtedness shall be included in an amount not to exceed:

(a) the lesser of (i) the net assets of the General Partner and (ii) the amount of such obligations to the extent that there is recourse, by contract or operation of law, to the property or assets of such Person or a Restricted Subsidiary of such Person; or

(b) if less than the amount determined pursuant to clause (a) immediately above, the actual amount of such Indebtedness that is recourse to such Person or a Restricted Subsidiary of such Person, if the Indebtedness is evidenced by a writing and is for a determinable amount.

"*Interest Rate Agreement*" means, with respect to any Person, any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement as to which such Person is party or a beneficiary.

"*Investment*" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of any direct or indirect advance, loan (other than advances or extensions of credit to customers in the ordinary course of business) or other extensions of credit (including by way of Guarantee or similar arrangement, but excluding any debt or extension of credit represented by a bank deposit other than a time deposit) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by, such Person and all other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP; *provided* that none of the following will be deemed to be an Investment:

(1) Hedging Obligations entered into in the ordinary course of business and in compliance with the Indenture;

(2) endorsements of negotiable instruments and documents in the ordinary course of business; and

(3) an acquisition of assets, Capital Stock or other securities by the Company or a Subsidiary for consideration to the extent such consideration consists of Common Stock of the Company.

For purposes of "—Certain covenants—Limitation on restricted payments,"

(1) "*Investment*" will include the portion (proportionate to the Company's equity interest in a Restricted Subsidiary to be designated as an Unrestricted Subsidiary) of the fair market value of the net assets of such Restricted Subsidiary at the time that such Restricted Subsidiary is designated an Unrestricted Subsidiary; *provided*, *however*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company will be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to (a) the Company's "Investment" in such Subsidiary at the time of such redesignation less (b) the portion (proportionate to the Company's equity interest in such Subsidiary) of the fair market value of the net assets (as conclusively determined by the Board of Directors of the Company in good faith) of such Subsidiary at the time that such Subsidiary is so redesignated a Restricted Subsidiary;

(2) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Board of Directors of the Company; and

(3) If the Company or any Restricted Subsidiary sells or otherwise disposes of any Voting Stock of any Restricted Subsidiary such that, after giving effect to any such sale or disposition, such entity is no longer a Subsidiary of the Company, the Company shall be deemed to have made an Investment on the date of any such sale or disposition equal to the fair market value (as conclusively determined by the Board of Directors of the Company in good faith) of the Capital Stock of such Subsidiary not sold or disposed of.

"*Issue Date*" means March 8, 2006.

"*Lien*" means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

"*Merger Agreement*" means the Agreement and Plan of Merger by and among Dave & Buster's, Inc., WS Midway Acquisition Sub, Inc. and Holdings, dated as of December 8, 2005.

"*Net Available Cash*" from an Asset Disposition means cash payments received (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise and net proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition or received in any other non cash form) therefrom, in each case net of:

(1) all legal, accounting, investment banking, title and recording tax expenses, commissions and other fees and expenses Incurred, and all Federal, state, provincial, foreign and local taxes required to be paid or accrued as a liability under GAAP (after taking into account any available tax credits or deductions and any tax sharing agreements), as a consequence of such Asset Disposition;

(2) all payments made on any Indebtedness which is secured by any assets subject to such Asset Disposition, in accordance with the terms of any Lien upon such assets, or which must by its terms, or in order to obtain a necessary consent to such Asset Disposition, or by applicable law is required be repaid out of the proceeds from such Asset Disposition;

(3) all distributions and other payments required to be made to minority interest holders in Subsidiaries or joint ventures as a result of such Asset Disposition; and

(4) the deduction of appropriate amounts to be provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the assets disposed of in such Asset Disposition and retained by the Company or any Restricted Subsidiary after such Asset Disposition.

"*Net Cash Proceeds*," with respect to any issuance or sale of Capital Stock, means the cash proceeds of such issuance or sale net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, listing fees, discounts or commissions and brokerage, consultant and other fees and charges actually Incurred in connection with such issuance or sale and net of taxes paid or payable as a result of such issuance or sale (after taking into account any available tax credit or deductions and any tax sharing arrangements); *provided* that the cash proceeds of an Equity Offering by Holdings shall not be deemed Net Cash Proceeds, except to the extent such cash proceeds are contributed to the Company.

"*Non-Guarantor Restricted Subsidiary*" means any Restricted Subsidiary that is not a Guarantor.

"*Non Recourse Debt*" means Indebtedness of a Person:

(1) as to which neither the Company nor any Restricted Subsidiary (a) provides any Guarantee or credit support of any kind (including any undertaking, guarantee, indemnity, agreement or instrument that would constitute Indebtedness) or (b) is directly or indirectly liable (as a guarantor or otherwise);

(2) no default with respect to which (including any rights that the holders thereof may have to take enforcement action against an Unrestricted Subsidiary) would permit (upon notice, lapse of time or both) any holder of any other Indebtedness of the Company or any Restricted Subsidiary to declare a default under such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity; and

(3) the explicit terms of which provide there is no recourse against any of the assets of the Company or its Restricted Subsidiaries.

"*Note Guarantee*" means, individually, any Guarantee of payment of the Notes and exchange notes issued in a registered exchange offer pursuant to the Registration Rights Agreement by a Guarantor pursuant to the terms of the Indenture and any supplemental indenture thereto, and, collectively, all such Guarantees. Each such Guarantee will be in the form prescribed by the Indenture.

"*Officer*" means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer or the Secretary of the Company. Officer of any Guarantor has a correlative meaning.

"*Officers' Certificate*" means a certificate signed by two Officers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of the Company.

"*Opinion of Counsel*" means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Company or the Trustee.

"*Pari Passu Indebtedness*" means Indebtedness that ranks equally in right of payment to the Notes.

"*Permitted Holders*" means Wellspring Capital Management LLC ("Wellspring"), investment funds managed by Wellspring, partners of Wellspring and any Affiliates or Related Persons thereof.

"*Permitted Investment*" means an Investment by the Company or any Restricted Subsidiary in:

(1) (a) a Restricted Subsidiary that is a Guarantor or (b) a Person which will, upon the making of such Investment, become a Restricted Subsidiary that is a Guarantor; *provided*, *however*, that the primary business of such Restricted Subsidiary is a Related Business;

(2) another Person if as a result of such Investment such other Person is merged or consolidated with or into, or transfers or conveys all or substantially all its assets to, the Company or a Restricted Subsidiary that is a Guarantor; *provided*, *however*, that such Person's primary business is a Related Business;

(3) cash and Cash Equivalents;

(4) receivables owing to the Company or any Restricted Subsidiary created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; *provided*, *however*, that such trade terms may include such concessionary trade terms as the Company or any such Restricted Subsidiary deems reasonable under the circumstances;

(5) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(6) to the extent permitted by applicable law, loans or advances to employees (other than executive officers) of the Company and its Restricted Subsidiaries made in the ordinary course of business consistent with past practices of the Company or such Restricted Subsidiary in an aggregate amount at any one time outstanding not to exceed $2.5 million (loans or advances that are forgiven shall continue to be deemed outstanding);

(7) Equity Interests, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Company or any Restricted Subsidiary or in satisfaction of judgments or pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of a debtor;

(8) Investments made as a result of the receipt of non cash consideration from an Asset Disposition that was made pursuant to and in compliance with "—Certain covenants—Limitation on sales of assets and subsidiary stock";

(9) Investments in existence on the Issue Date;

(10) Currency Agreements, Interest Rate Agreements, Commodity Agreements and related Hedging Obligations, which transactions or obligations are Incurred in compliance with "—Certain covenants—Limitation on indebtedness";

(11) Investments by the Company or any of its Restricted Subsidiaries, together with all other Investments pursuant to this clause (11), in an aggregate amount at the time of such Investment not to exceed $15.0 million outstanding at any one time (with the fair market value of such Investment being measured at the time made and without giving effect to subsequent changes in value);

(12) Guarantees issued in accordance with "—Certain covenants—Limitation on indebtedness";

(13) any Asset Swap made in accordance with "—Certain covenants—Limitation on sales of assets and subsidiary stock";

(14) any acquisition of assets or Equity Interests solely in exchange for, or out of the Net Cash Proceeds received from, the substantially contemporaneous issuance of Equity Interests (other than Disqualified Stock) of the Company; provided that the amount of any such Net Cash Proceeds that are utilized for any such Investment pursuant to this clause (14) will be excluded from clause (c)(ii) of the first paragraph of the covenant described above under the caption "—Limitation on restricted payments";

(15) endorsements of negotiable instruments and documents in the ordinary course of business; and

(16) pledges or deposits permitted under clause (2) of the definition of Permitted Liens.

"*Permitted Liens*" means, with respect to any Person:

(1) Liens securing Indebtedness and other obligations under the Senior Secured Credit Agreement and related Hedging Obligations and liens on assets of Restricted Subsidiaries securing Guarantees of Indebtedness and other obligations of the Company under the Senior Secured Credit Agreement permitted to be Incurred under the Indenture in an aggregate principal amount at any one time outstanding not to exceed $160.0 million;

(2) pledges or deposits by such Person under workmen's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or United States government bonds to secure surety or appeal bonds to which such Person is

a party, or deposits as security for contested taxes or import or customs duties or for the payment of rent, in each case Incurred in the ordinary course of business;

(3) Liens imposed by law, including carriers', warehousemen's, mechanics', materialmen's and repairmen's Liens, in each case for sums not yet due or being contested in good faith by appropriate proceedings if a reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made in respect thereof;

(4) Liens for taxes, assessments or other governmental charges not yet subject to penalties for non payment or which are being contested in good faith by appropriate proceedings provided appropriate reserves required pursuant to GAAP have been made in respect thereof;

(5) Liens in favor of issuers of surety or performance bonds or letters of credit or bankers' acceptances issued pursuant to the request of and for the account of such Person in the ordinary course of its business; *provided, however*, that such letters of credit do not constitute Indebtedness;

(6) encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) as to the use of real properties or liens incidental to the conduct of the business of such Person or to the ownership of its properties which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(7) Liens securing Hedging Obligations so long as the related Indebtedness is, and is permitted to be under the Indenture, secured by a Lien on the same property securing such Hedging Obligation;

(8) leases, licenses, subleases and sublicenses of assets (including, without limitation, real property and intellectual property rights) which do not materially interfere with the ordinary conduct of the business of the Company or any of its Restricted Subsidiaries;

(9) judgment Liens not giving rise to an Event of Default so long as such Lien is adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(10) Liens for the purpose of securing the payment of all or a part of the purchase price of, or Capitalized Lease Obligations, purchase money obligations or other payments Incurred to finance the acquisition, lease, improvement or construction of, assets or property acquired or constructed in the ordinary course of business, *provided* that:

(a) the aggregate principal amount of Indebtedness secured by such Liens is otherwise permitted to be Incurred under the Indenture and does not exceed the cost of the assets or property so acquired or constructed; and

(b) such Liens are created within 180 days of construction or acquisition of such assets or property and do not encumber any other assets or property of the Company or any Restricted Subsidiary other than such assets or property and assets affixed or appurtenant thereto;

(11) Liens arising solely by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depositary institution; *provided* that:

(a) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by the Company in excess of those set forth by regulations promulgated by the Federal Reserve Board; and

(b) such deposit account is not intended by the Company or any Restricted Subsidiary to provide collateral to the depository institution;

(12) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Company and its Restricted Subsidiaries in the ordinary course of business;

(13) Liens existing on the Issue Date, other than Liens Incurred pursuant to clause (1) of this definition;

(14) Liens on property or Capital Stock of a Person at the time such Person becomes a Restricted Subsidiary; *provided*, *however*, that such Liens are not created, Incurred or assumed in connection with, or in contemplation of, such other Person becoming a Restricted Subsidiary; *provided*, *further, however,* that any such Lien may not extend to any other property owned by the Company or any Restricted Subsidiary;

(15) Liens on property at the time the Company or a Restricted Subsidiary acquired the property, including any acquisition by means of a merger or consolidation with or into the Company or any Restricted Subsidiary; *provided*, *however*, that such Liens are not created, Incurred or assumed in connection with, or in contemplation of, such acquisition; *provided further*, *however*, that such Liens may not extend to any other property owned by the Company or any Restricted Subsidiary;

(16) Liens securing Indebtedness or other obligations of a Restricted Subsidiary owing to the Company or another Restricted Subsidiary;

(17) Liens securing the Notes and Note Guarantees;

(18) Liens securing Refinancing Indebtedness Incurred to refinance, refund, replace, amend, extend or modify, as a whole or in part, Indebtedness that was previously so secured pursuant to clauses (10), (13), (14), (15), (17) and (20), *provided* that any such Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness being refinanced or is in respect of property that is the security for a Permitted Lien hereunder;

(19) any interest or title of a lessor under any Capitalized Lease Obligation or operating lease;

(20) Liens under industrial revenue, municipal or similar bonds;

(21) Liens securing Indebtedness (other than Subordinated Obligations and Guarantor Subordinated Obligations) in an aggregate principal amount outstanding at any one time not to exceed $5.0 million; and

(22) Liens securing Indebtedness and other obligations of Foreign Subsidiaries that are incurred in accordance with "—Certain covenants—Limitation on indebtedness" in an aggregate principal amount outstanding at any one time not to exceed $5.0 million.

"*Person*" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision thereof or any other entity.

"*Preferred Stock*," as applied to the Capital Stock of any corporation, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation.

"*Preopening Costs*" means "start up costs" (such term used herein as defined in SOP 98 5 published by the American Institute of Certified Public Accountants) related to the acquisition, opening and organizing of new restaurants, including, without limitation, the cost of feasibility studies, staff training and recruiting and travel costs for employees engaged in such start up activities.

"*Receivable*" means a right to receive payment arising from a sale or lease of goods or the performance of services by a Person pursuant to an arrangement with another Person pursuant to which such other Person is obligated to pay for goods or services under terms that permit the purchase of such goods and services on credit and shall include, in any event, any items of property that would be classified as an "account," "chattel paper," "payment intangible" or "instrument" under the Uniform Commercial Code as in effect in the State of New York and any "supporting obligations" as so defined.

"*Receivables Fees*" means any fees or interest paid to purchasers or lenders providing the financing in connection with a factoring agreement or other similar agreement, including any such amounts paid by discounting the face amount of Receivables or participations therein transferred in connection with a factoring agreement or other similar arrangement, regardless of whether any such transaction is structured as on-balance sheet or off- balance sheet or through a Restricted Subsidiary or an Unrestricted Subsidiary.

"*Refinancing Indebtedness*" means Indebtedness that is Incurred to refund, refinance, replace, exchange, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) (collectively, "refinance," "refinances," and "refinanced" shall have a correlative meaning) any Indebtedness existing on the date of the Indenture or Incurred in compliance with the Indenture (including Indebtedness of the Company that refinances Indebtedness of any Restricted Subsidiary and Indebtedness of any Restricted Subsidiary that refinances Indebtedness of another Restricted Subsidiary or the Company) including Indebtedness that refinances Refinancing Indebtedness; *provided, however,* that:

(1) (a) if the Stated Maturity of the Indebtedness being refinanced is earlier than the Stated Maturity of the Notes, the Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being refinanced or (b) if the Stated Maturity of the Indebtedness being refinanced is later than the Stated Maturity of the Notes, the Refinancing Indebtedness has a Stated Maturity at least 91 days later than the Stated Maturity of the Notes;

(2) the Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being refinanced;

(3) such Refinancing Indebtedness is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refinanced (plus, without duplication, any additional Indebtedness Incurred to pay interest or premiums required by the instruments governing such existing Indebtedness and fees Incurred in connection therewith); and

(4) if the Indebtedness being refinanced is subordinated in right of payment to the Notes or a Subsidiary's Note Guarantee, such Refinancing Indebtedness is subordinated in right of payment to the Notes or a Subsidiary's Note Guarantee on terms at least as favorable to the holders as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded.

"*Registration Rights Agreement*" means that certain registration rights agreement dated as of the date of the Indenture by and among the Company, the Guarantors and the initial purchasers set forth therein and, with respect to any Additional Notes, one or more substantially similar registration rights agreements among the Company and the other parties thereto, as such agreements may be amended from time to time.

"*Related Business*" means (x) any business which is the same as or related, ancillary or complementary to, or a reasonable extension or expansion of, any of the businesses of the Company and its Restricted Subsidiaries on the date of the Indenture and (y) any unrelated business to the extent it is not material to the Company.

"*Related Business Assets*" means assets used or useful in a Related Business.

"*Related Person*" with respect to any Permitted Holder means:

(1) any controlling stockholder or a majority (or more) owned Subsidiary of such Permitted Holder or, in the case of an individual, any spouse or immediate family member of such Permitted Holder, any trust created for the benefit of such individual or such individual's estate, executor, administrator, committee or beneficiaries; or

ii. any trust, corporation, partnership or other entity, the beneficiaries, stockholders, partners, owners or Persons beneficially holding a majority (or more) controlling interest of which consist of such Permitted Holder and/or such other Persons referred to in the immediately preceding clause (i).

"*Restricted Investment*" means any Investment other than a Permitted Investment.

"*Restricted Subsidiary*" means any Subsidiary of the Company other than an Unrestricted Subsidiary.

"*Sale/Leaseback Transaction*" with respect to any Person means an arrangement relating to property now owned or hereafter acquired whereby the Company or a Restricted Subsidiary transfers such property to a Person and the Company or a Restricted Subsidiary leases it from such Person.

"*SEC*" means the United States Securities and Exchange Commission.

"*Securities Act*" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"*Senior Secured Credit Agreement*" means the Credit Agreement to be entered into among Holdings, the Company, as Borrower, 6131646 Canada Inc., as Canadian Borrower, a documentation agent, a syndication agent, JPMorgan Chase Bank N.A., as Administrative Agent, and the lenders parties thereto from time to time, as the same may be amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time (including increasing the amount loaned thereunder provided that such additional Indebtedness is Incurred in accordance with the covenant described under "—Limitation on indebtedness"); provided that a Senior Secured Credit Agreement shall not (x) include Indebtedness issued, created or Incurred pursuant to a registered offering of securities under the Securities Act or a private placement of securities (including under Rule 144A or Regulation S) pursuant to an exemption from the registration requirements of the Securities Act or (y) relate to Indebtedness that does not consist exclusively of Pari Passu Indebtedness or Guarantor Pari Passu Indebtedness.

"*Significant Subsidiary*" means any Restricted Subsidiary that would be a "Significant Subsidiary" of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

"*Stated Maturity*" means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

"*Subordinated Obligation*" means any Indebtedness of the Company (whether outstanding on the Issue Date or thereafter Incurred) which is subordinated or junior in right of payment to the Notes pursuant to a written agreement.

"*Subsidiary*" of any Person means (a) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total ordinary voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof (or persons performing similar functions) or (b) any partnership, joint venture limited liability company or similar entity of which more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, is, in the case of clauses (a) and (b), at the time owned or controlled, directly or indirectly, by (1) such Person, (2) such Person and one or more Subsidiaries of such Person or (3) one or more Subsidiaries of such Person. Unless otherwise specified herein, each reference to a Subsidiary will refer to a Subsidiary of the Company.

"*Transactions*" means the transactions contemplated by the Merger Agreement, the initial borrowings under the Senior Secured Credit Agreement, the issuance of the Notes, the application of the proceeds therefrom and the payment of related fees and expenses.

"*Unrestricted Subsidiary*" means:

(1) any Subsidiary of the Company that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors of the Company in the manner provided below; and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Board of Directors of the Company may designate any Subsidiary of the Company (including any newly acquired or newly-formed Subsidiary or a Person becoming a Subsidiary through merger or consolidation or Investment therein) to be an Unrestricted Subsidiary only if:

(1) such Subsidiary or any of its Subsidiaries does not own any Capital Stock or Indebtedness of or have any Investment in, or own or hold any Lien on any property of, any other Subsidiary of the Company which is not a Subsidiary of the Subsidiary to be so designated or otherwise an Unrestricted Subsidiary;

(2) all the Indebtedness of such Subsidiary and its Subsidiaries shall, at the date of designation, and will at all times thereafter, consist of Non Recourse Debt;

(3) such designation and the Investment of the Company in such Subsidiary complies with "—Certain covenants—Limitation on restricted payments";

(4) such Subsidiary, either alone or in the aggregate with all other Unrestricted Subsidiaries, does not operate, directly or indirectly, all or substantially all of the business of the Company and its Subsidiaries;

(5) such Subsidiary is a Person with respect to which neither the Company nor any of its Restricted Subsidiaries has any direct or indirect obligation:

(a) to subscribe for additional Capital Stock of such Person; or

(b) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results; and

(6) on the date such Subsidiary is designated an Unrestricted Subsidiary, such Subsidiary is not a party to any agreement, contract, arrangement or understanding with the Company or any Restricted Subsidiary with terms substantially less favorable to the Company than those that might have been obtained from Persons who are not Affiliates of the Company.

Any such designation by the Board of Directors of the Company shall be evidenced to the Trustee by filing with the Trustee a resolution of the Board of Directors of the Company giving effect to such designation and an Officers' Certificate certifying that such designation complies with the foregoing conditions. If, at any time, any Unrestricted Subsidiary would fail to meet the foregoing requirements as an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of the Indenture and any Indebtedness of such Subsidiary shall be deemed to be Incurred as of such date.

The Board of Directors of the Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided that immediately after giving effect to such designation, no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof and the Company could Incur at least $1.00 of additional Indebtedness under the first paragraph of the "—Limitation on indebtedness" covenant on a pro forma basis taking into account such designation.

"*U.S. Government Obligations*" means securities that are (a) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged or (b) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depositary receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depositary receipt.

"*Voting Stock*" of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors, managers or trustees, as applicable.

"*Wholly-Owned Subsidiary*" means a Restricted Subsidiary, all of the Capital Stock of which (other than directors' qualifying shares) is owned by the Company or another Wholly-Owned Subsidiary.

Book-Entry Delivery and Form

Except as described below, the Exchange Notes will be initially represented by one or more global bonds ("Global Bonds") in fully registered form without interest coupons. The Global Bonds will be deposited with the Trustee, as custodian for DTC, and DTC or its nominee will initially be the sole registered holder of the Exchange Notes for all purposes under the Indenture. We expect that, pursuant to procedures established by DTC, (i) upon the issuance of Global Bonds, DTC or its custodian will credit, on its internal system, the principal amount at maturity of the individual beneficial interests represented by such Global Bonds to the respective accounts of persons who have accounts with such depositary, and (ii) ownership of beneficial interests in the Global Bonds will be shown on, and the transfer of such ownership will be effected only through, records maintained by DTC or its nominee (with respect to interests of participants) and the records of participants (with respect to interests of persons other than participants). Ownership of beneficial interests in the Global Bonds will

be limited to persons who have accounts with DTC ("participants") or persons who hold interests through participants. Holders of Exchange Notes may hold their interests in the Global Bonds directly through DTC if they are participants in such system, or indirectly through organizations that are participants in such system.

So long as DTC, or its nominee, is the registered owner or holder of the Global Bonds, DTC or such nominee, as the case may be, will be considered the sole owner or holder of the Exchange Notes represented by such Global Bonds for all purposes under the Indenture. No beneficial owner of an interest in the Global Bonds will be able to transfer that interest except in accordance with DTC's procedures, in addition to those provided for under the Indenture with respect to the Exchange Notes.

Payments of the principal of, premium (if any) and interest on the Global Bonds will be made to DTC or its nominee, as the case may be, as the registered owner thereof. None of the Company, the Trustee, nor any paying agent will have any responsibility or liability for any aspect of the records relating to such beneficial ownership interest.

We expect that DTC or its nominee, upon receipt of any payment of principal, premium (if any), or interest on the Global Bonds, will credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of the Global Bonds as shown on the records of DTC or its nominee. We also expect that payments by participants to owners of beneficial interests in the Global Bonds held through such participants will be governed by standing instructions and customary practice, as is now the case with securities held for the accounts of customers registered in the names of nominees for such customers. Such payments will be the responsibility of such participants.

Transfers between participants in DTC will be effected in the ordinary way through DTC's same-day funds system in accordance with DTC rules and will be settled in same-day funds.

So long as DTC or its nominee is the registered owner or holder of such Global Bonds, DTC or such nominee, as the case may be, will be considered the sole owner or holder of the Exchange Notes represented by such Global Bonds for the purposes of receiving payment on the Exchange Notes, receiving notices and for all other purposes under the Indenture and the Exchange Notes. Beneficial interests in the Global Bonds will be evidenced only by, and transfers thereof will be effected only through, records maintained by DTC and its participants. Except as provided below, owners of beneficial interests in a Global Bond will not be entitled to receive physical delivery of certificated Exchange Notes in definitive form and will not be considered the holders of such Global Bond for any purposes under the Indenture. Accordingly, each person owning a beneficial interest in a Global Bond must rely on the procedures of DTC and, if such person is not a participant, on the procedures of the participant through which such person owns its interests, to exercise any rights of a holder of Exchange Notes under the Indenture. We understand that under existing industry practices, in the event that we request any action of holders of Exchange Notes or that an owner of a beneficial interest in a Global Bond desires to give or take any action that a holder of Exchange Notes is entitled to give or take under the Indenture, DTC would authorize the participants holding the relevant beneficial interest to give or take such action, and such participants would authorize beneficial owners owning through such participants to give or take such action or would otherwise act upon the instructions of the beneficial owners owning through them.

DTC has advised us that it will take any action permitted to be taken by a holder of Exchange Notes only at the direction of one or more participants to whose account the DTC interests in the Global Bonds are credited and only in respect of such portion of the aggregate principal amounts of Exchange Notes as to which such participant or participants has or have been given such direction.

DTC has advised us as follows: DTC is a limited purpose trust company organized under the laws of the State of New York, a member of the Federal Reserve System, a "clearing corporation" within

the meaning of the Uniform Commercial Code and a "Clearing Agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). DTC was created to hold securities for its participants and facilitate the clearance and settlement of securities transactions between participants through electronic book-entry changes in accounts of its participants, thereby eliminating the need for physical movement of certificates. Participants include securities brokers and dealers, banks, trust companies, and clearing corporations and certain other organizations. Indirect access to the DTC system is available to others such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a participant, either directly or indirectly ("indirect participants").

Although DTC has agreed to the foregoing procedures in order to facilitate transfers of interests in the Global Bonds among participants of DTC, it is under no obligation to perform such procedures, and such procedures may be discontinued at any time. Neither us nor the Trustee will have any responsibility for the performance by DTC or its participants or indirect participants of their respective obligations under the rules and procedures governing their operations.

Certificated Securities

Exchange Notes will be issued in physical form and delivered to each person that DTC identifies as a beneficial owner of the related Exchange Notes only if (i) DTC (a) notifies us that it is unwilling or unable to continue as depositary for the Global Bonds and we thereupon fail to appoint a successor depositary or (b) has ceased to be a clearing agency registered under the Exchange Act, (ii) we, at our option, notify the Trustee in writing that we elect to cause the issuance of Exchange Notes in certificated form or (iii) there shall have occurred and be continuing a Default or Event of Default with respect to the Exchange Notes. Upon any such exchange, certificated Exchange Notes shall be registered in the names of the beneficial owners of the Global Bonds, which names shall be provided by DTC's relevant participants (as identified by DTC) to the Trustee.

Registration Rights

We and our guarantors entered into a registration rights agreement with the initial purchaser on March 8, 2006. In that agreement, we and the guarantors agree for the benefit of the holders of the Restricted Notes that we will use our reasonable best efforts to file with the SEC and cause to become effective a registration statement relating to an offer to exchange the Restricted Notes for an issue of SEC-registered Exchange Notes with terms identical to the Restricted Notes (except that the Exchange Notes will not be subject to restrictions on transfer or to any increase in annual interest rate as described below).

Upon the effectiveness of the registration statement of which this prospectus forms a part, we will offer the Exchange Notes in return for the Restricted Notes. The exchange offer will remain open for at least 20 business days after the date we mail notice of the exchange offer to holders of the Restricted Notes. For each Restricted Note surrendered to us under the exchange offer, the holder will receive an Exchange Note of equal principal amount. Interest on each Exchange Note will accrue from the last interest payment date on which interest was paid on the Restricted Notes or, if no interest has been paid on the Restricted Notes, from the closing date of this exchange offering. We and the guarantors will use our reasonable best efforts to complete the exchange offer not later than 30 days after the exchange offer registration statement becomes effective. Under current SEC interpretations, the Exchange Notes will generally be freely transferable after the exchange offer, except that any broker dealer that participates in the exchange must deliver a prospectus meeting the requirements of the Securities Act when it resells the Exchange Notes.

If we effect the exchange offer, we will be entitled to close the exchange offer 20 business days after its commencement, provided that we have accepted all Restricted Notes validly surrendered in

accordance with the terms of the exchange offer. Restricted Notes not tendered in the exchange offer shall bear interest at the rate set forth on the cover page of the prospectus and be subject to all the terms and conditions specified in the indenture, including transfer restrictions.

This summary of the provisions of the registration rights agreement does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the registration rights agreement, a copy of which is incorporated by reference as an exhibit to the registration statement of which this prospectus forms a part.

Shelf Registration

In the event that we determine that a registered exchange offer is not available under applicable law or if applicable interpretations of the staff of the SEC do not permit us to effect the exchange offer, or, if for any reason, we and the guarantors do not consummate the exchange offer by 210 days after March 8, 2006, or upon receipt of a written request from the initial purchaser representing that it holds Restricted Notes that are ineligible to be exchanged in the exchange offer of the Exchange Notes, we will use our reasonable best efforts to cause to become effective a shelf registration statement relating to resales of the Restricted Notes and to keep that shelf registration statement effective until the expiration of the time period referred to in Rule 144(k) under the Securities Act, or such shorter period that will terminate when all Restricted Notes covered by the shelf registration statement have been sold. We and the guarantors will, in the event of such a shelf registration, provide to each holder of the Restricted Notes copies of a prospectus, notify each holder when the shelf registration statement has become effective and take certain other actions to permit resales of the Restricted Notes. A holder that sells Restricted Notes under the shelf registration statement generally will be required to make certain representations to us (as described in the registration rights agreement), to be named as a selling security holder in the related prospectus and to deliver a prospectus to purchasers, will be subject to certain of the civil liability provisions under the Securities Act in connection with those sales and will be bound by the provisions of the registration rights agreement that are applicable to such a holder (including certain indemnification obligations). Holders of Restricted Notes will also be required to suspend their use of the prospectus included in the shelf registration statement under specified circumstances upon receipt of notice from us. Under applicable interpretations of the staff of the SEC, our affiliates will not be permitted to exchange their Restricted Notes for Exchange Notes in the exchange offer.

Additional Interest

If the exchange offer is not completed (or, if required, the shelf registration statement is not declared effective) on or before the date that is 210 days after March 8, 2006, the closing date, interest on the Restricted Notes will be increased by 0.25% per annum (which rate will be increased by an additional 0.25% per annum for each subsequent 90-day period that such additional interest continues to accrue, provided that the rate at which such additional interest accrues may in no event exceed 1.0% per annum) until the exchange offer is completed, the shelf registration statement is declared effective or such Exchange Notes become freely tradable under the Securities Act. If a shelf registration statement is required to be filed due to an unsold allotment of Restricted Notes held by an initial purchaser, the Restricted Notes held by the initial purchaser will accrue additional interest if the shelf registration is not declared effective on the later of (i) 180 days after the closing date of this offering and (ii) 90 days after such initial purchaser informs us of such unsold allotment.

Governing Law

The registration rights agreement is governed by, and construed in accordance with, the laws of the State of New York.

MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following discussion is a summary of the United States federal income tax consequences of the exchange offer to a holder of Restricted Notes. This discussion is based upon current United States federal income tax law, which is subject to change, possibly with retroactive effect. This discussion does not address any state, local or foreign tax laws. Holders of Restricted Notes are urged to consult their tax advisors regarding the United States federal, state, local and foreign income and other tax consequences of the exchange offer.

The exchange of Restricted Notes for Exchange Notes pursuant to the exchange offer will not constitute a "significant modification" of the Restricted Notes for United States federal income tax purposes and, accordingly, the Exchange Notes received will be treated as a continuation of the Restricted Notes in the hands of such holder. As a result, there will be no U.S. federal income tax consequences to a holder who exchanges Restricted Notes for Exchange Notes pursuant to the exchange offer, and any such holder will not recognize gain or loss and will have the same adjusted tax basis and holding period in the Exchange Notes as it had in the Restricted Notes immediately before the exchange. A holder that does not exchange its Restricted Notes for Exchange Notes pursuant to the exchange offer will not recognize any gain or loss for United States federal income tax purposes upon consummation of the exchange offer.

To ensure compliance with Treasury Department Circular 230, holders of the Restricted Notes are hereby notified that (A) any discussion of U.S. Federal tax issues in this prospectus is not intended or written to be used, and cannot be used, by holders of the Restricted Notes for the purpose of avoiding penalties that may be imposed on such holders under the Internal Revenue Code, (B) any discussion of U.S. Federal tax issues in this prospectus is written to support the promotion or marketing of the transactions or matters addressed herein, and (C) holders of the Restricted Notes should seek advice based on their particular circumstances from an independent tax advisor.

PLAN OF DISTRIBUTION

Each broker-dealer that receives the Exchange Notes for its own account under the exchange offer must acknowledge that it will deliver a prospectus in connection with any resale of those bonds. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer for resales of the Exchange Notes received in exchange for Restricted Notes that had been acquired as a result of market-making or other trading activities. We have agreed that, for a period of 120 days after the expiration date of the exchange offer, we will make this prospectus, as it may be amended or supplemented, available to any broker-dealer for use in connection with any such resale.

Notwithstanding the foregoing, we are entitled under the registration rights agreement to suspend the use of this prospectus by broker-dealers under specified circumstances.

If we suspend the use of this prospectus, the 120-day period referred to above will be extended by a number of days equal to the period of the suspension.

We will not receive any proceeds from any sale of the Exchange Notes by broker-dealers. Exchange Notes received by broker-dealers for their own account under the exchange offer may be sold from time to time in one or more transactions in the over-the-counter market, in negotiated transactions, through the writing of options on those bonds or a combination of those methods, at market prices prevailing at the time of resale, at prices related to prevailing market prices or at negotiated prices. Any resales may be made directly to purchasers or to or through brokers or dealers who may receive compensation in the form of commissions or concessions from the selling broker-dealer or the purchasers of the Exchange Notes. Any broker-dealer that resells the Exchange Notes received by it for its own account under the exchange offer and any broker or dealer that participates in a distribution of the Exchange Notes may be deemed to be an "underwriter" within the meaning of

the Securities Act and any profit on any resale of the Exchange Notes and any commissions or concessions received by these persons may be deemed to be underwriting compensation under the Securities Act. By acknowledging that it will deliver and by delivering a prospectus, a broker-dealer will not be deemed to be admitting that it is an "underwriter" within the meaning of the Securities Act.

We have agreed to pay all expenses incidental to the exchange offer other than commissions and concessions of any broker or dealer and will indemnify holders of the Exchange Notes, including any broker-dealers, against certain liabilities, including liabilities under the Securities Act or contribute to payments that they may be required to make in request thereof.

LEGAL MATTERS

Certain legal matters in connection with the offering of the Exchange Notes, including the validity of the Exchange Notes, will be passed upon for us by Hallett & Perrin, Dallas, Texas.

EXPERTS

The consolidated financial statements of Dave & Buster's, Inc. and its subsidiaries at January 29, 2006 and January 30, 2005 and for each of the three years in the period ended January 29, 2006, appearing in this Prospectus and Registration Statement, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

In connection with the exchange offer, we have filed a Registration Statement on Form S-4 with the SEC. This prospectus, which is part of the registration statement, does not contain all of the information included in the registration statement, and you should refer to the registration statement and its exhibits to read that information. You may read and copy the registration statement, related exhibits and other information we file with the SEC at the following location of the SEC:

Public Reference Room
100 F Street, N.E., Room 1580
Washington, D.C. 20549

Please call the SEC at 1-800-SEC-0330 for further information on the Public Reference Room. You may also obtain copies of this information by mail from the Public Reference Section of the SEC, 100 F Street, N.E., Washington, D.C. 20549, at prescribed rates. Our SEC filings are also available to the public from document retrieval services and the Internet website maintained by the SEC at *http://www.sec.gov* or at our company's website at *http://www.daveandbusters.com.*

You may request copies of our SEC filings and forms of documents pertaining to the exchange offer referred to in this prospectus without charge, by written or telephonic request directed to us at Dave & Buster's, Inc., 2481 Mañana Drive, Dallas, Texas 75220, Attention: Investor Relations, Telephone: (214) 357-9588.

In order to obtain timely delivery of such materials, you must request documents from us no later than [ ], 2006, which is five business days before the expiration date of this exchange offer.

Index to financial statements

REPORT OF INDEPENDENT AUDITORS

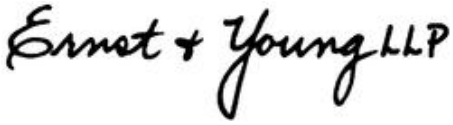
The Board of Directors of Dave & Buster's, Inc.

We have audited the accompanying consolidated balance sheets of Dave & Buster's, Inc. as of January 29, 2006 and January 30, 2005, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended January 29, 2006. 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. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and 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 January 29, 2006 and January 30, 2005, and the consolidated results of its operations and its cash flows for the three years in the period ended January 29, 2006, in conformity with accounting principles generally accepted in the United States.

As discussed in Note 1 to the consolidated financial statements, effective October 31, 2005, the Company adopted FASB Staff Position 13-1, *Accounting for Rental Costs Incurred During a Construction Period*.



Dallas, Texas
May 11, 2006

DAVE & BUSTER'S, INC.

CONSOLIDATED BALANCE SHEETS

(Predecessor)

	January 29, 2006	January 30, 2005
	(In thousands, except share amounts)	
Assets		
Current assets:		
Cash and cash equivalents	$ 7,582	$ 11,387
Inventories	30,953	28,935
Prepaid expenses	2,985	3,034
Other current assets	4,194	2,612
Total current assets	45,714	45,968
Property and equipment, net (Note 4)	356,132	331,478
Other assets and deferred charges	21,216	23,725
Total assets	$ 423,062	$ 401,171
Liabilities and stockholders' equity		
Current liabilities:		
Current installments of long-term debt (Note 6)	$ 9,625	$ 7,792
Accounts payable	26,393	15,909
Accrued liabilities (Note 5)	19,970	18,119
Income taxes payable (Note 7)	2,669	5,802
Deferred income taxes (Note 7)	5,779	6,002
Total current liabilities	64,436	53,624
Deferred income taxes (Note 7)	5,401	4,959
Deferred rent liability	74,583	63,113
Other liabilities	2,872	2,179
Long-term debt, less current installments (Note 6)	70,550	80,351
Commitments and contingencies (Notes 6, 8 and 12)		
Stockholders' equity (Notes 2 and 9):		
Preferred stock, 10,000,000 authorized; none issued	—	—
Common stock, $0.01 par value, 50,000,000 authorized; 13,722,750 and 13,452,267 shares issued and outstanding as of January 29, 2006 and January 30, 2005, respectively	137	135
Paid-in capital	125,312	122,173
Restricted stock awards	2,180	1,454
Accumulated comprehensive income	345	225
Retained earnings	79,092	74,804
	207,066	198,791
Less treasury stock, at cost (175,000 shares)	1,846	1,846
Total stockholders' equity	205,220	196,945
Total liabilities and stockholders' equity	$ 423,062	$ 401,171

See accompanying notes to consolidated financial statements.

DAVE & BUSTER'S, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS

(Predecessor)

	Fiscal Year Ended		
	January 29, 2006	January 30, 2005	February 1, 2004
		(In thousands)	
Food and beverage revenues	$ 253,996	$ 209,689	$ 191,881
Amusement and other revenues	209,456	180,578	170,941
Total revenues	463,452	390,267	362,822
Cost of food and beverage	61,818	51,367	46,354
Cost of amusement and other	25,475	21,704	21,788
Total cost of products	87,293	73,071	68,142
Operating payroll and benefits	132,384	110,542	105,027
Other store operating expenses	151,677	119,509	108,413
General and administrative expenses	31,158	26,221	25,033
Depreciation and amortization expense	42,616	34,238	32,741
Startup costs	5,325	1,295	—
Total operating costs	450,453	364,876	339,356
Operating income	12,999	25,391	23,466
Interest expense, net	6,695	5,586	6,926
Income before provision for income taxes	6,304	19,805	16,540
Provision for income taxes (Note 7)	2,016	6,925	5,619
Net income	$ 4,288	$ 12,880	$ 10,921

See accompanying notes to consolidated financial statements.

DAVE & BUSTER'S, INC.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

(Predecessor)

	Common Stock							
	Shares	Amount	Paid-in Capital	Retained Earnings	Restricted Stock	Accumulated Other Comprehensive Income	Treasury Stock	Total
				(In thousands)				
Balance, February 2, 2003	13,080	$ 132	$ 116,678	$ 50,993	$ 608	$ —	$ (1,846)	$ 166,565
Net earnings	—	—	—	10,921	—	—	—	10,921
Stock option exercises	101	—	704	—	—	—	—	704
Tax benefit related to stock option exercises	—	—	137	—	—	—	—	137
Amortization of restricted stock awards	—	—	—	—	297	—	—	297
Fair value of warrants issued in connection with convertible subordinated notes	—	—	1,150	—	—	—	—	1,150
Other	—	—	—	10	—	—	—	10
Balance, February 1, 2004	13,181	132	118,669	61,924	905	—	(1,846)	179,784
Net earnings	—	—	—	12,880	—	—	—	12,880
Unrealized foreign currency translation gain (net of tax)	—	—	—	—	—	225	—	225
Comprehensive income	—	—	—	—	—	—	—	13,105
Stock option exercises	271	3	2,799	—	—	—	—	2,802
Tax benefit related to stock option exercises	—	—	705	—	—	—	—	705
Amortization of restricted stock awards	—	—	—	—	549	—	—	549
Balance, January 30, 2005	13,452	135	122,173	74,804	1,454	225	(1,846)	196,945
Net earnings	—	—	—	4,288	—	—	—	4,288
Unrealized foreign currency translation gain (net of tax)	—	—	—	—	—	120	—	120
Comprehensive income	—	—	—	—	—	—	—	4,408
Stock option exercises	271	2	2,268	—	—	—	—	2,270
Tax benefit related to stock option exercises	—	—	871	—	—	—	—	871
Amortization of restricted stock awards	—	—	—	—	726	—	—	726
Balance, January 29, 2006	13,723	$ 137	$ 125,312	$ 79,092	$ 2,180	$ 345	$ (1,846)	$ 205,220

See accompanying notes to consolidated financial statements.

DAVE & BUSTER'S, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(Predecessor)

	Fiscal Year Ended		
	January 29, 2006	January 30, 2005	February 1, 2004
	(In thousands)		
Cash flows from operating activities:			
Net income	$ 4,288	$ 12,880	$ 10,921
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization expense	42,616	34,238	32,741
Deferred income tax expense (benefit)	220	(3,820)	822
Tax benefit related to stock options	871	705	137
Restricted stock awards	726	549	297
Warrants related to convertible debt	257	254	107
Other, net	30	314	(256)
Changes in operating assets and liabilities, net of effect of business acquisitions			
Inventories	(2,018)	(2,069)	401
Prepaid expenses	49	(325)	(660)
Other current assets	(1,582)	(94)	(382)
Other assets and deferred charges	3,666	(1,884)	(502)
Accounts payable	5,419	(475)	(3,453)
Accrued liabilities	1,851	3,535	697
Income taxes payable	(3,133)	2,914	2,564
Deferred rent liability	11,470	2,154	(115)
Other liabilities	693	188	351
Net cash provided by operating activities	65,423	49,064	43,670
Cash flows from investing activities:			
Capital expenditures	(62,066)	(34,234)	(24,292)
Business acquisitions, net of cash acquired	(1,511)	(47,876)	(3,600)
Proceeds from sales of property and equipment	306	338	471
Net cash used in investing activities	(63,271)	(81,772)	(27,421)
Cash flows from financing activities:			
Borrowings under long-term debt	33,500	78,446	44,825
Repayments of long-term debt	(41,725)	(43,250)	(57,789)
Debt costs	—	(841)	(4,469)
Proceeds from exercises of stock options	2,268	2,805	704
Net cash provided by (used in) financing activities	(5,957)	37,160	(16,729)
Increase (decrease) in cash and cash equivalents	(3,805)	4,452	(480)
Beginning cash and cash equivalents	11,387	6,935	7,415
Ending cash and cash equivalents	$ 7,582	$ 11,387	$ 6,935
Supplemental disclosures of cash flow information:			
Cash paid for income taxes—net of refunds	$ 4,082	$ 7,146	$ 1,798
Cash paid for interest, net of amounts capitalized	$ 4,183	$ 2,504	$ 5,428

See accompanying notes to consolidated financial statements.

(dollars in thousands, except per share amounts)

Note 1: Summary of significant accounting policies

Basis of presentation—Dave & Buster's, Inc. ("Dave & Buster's" or the "Company"), a Missouri corporation, is an operator of large format, high-volume regional entertainment complexes. The Company's one industry segment is the ownership and operation of 46 restaurant/entertainment complexes (a "Complex" or "Store") under the names "Dave & Buster's," "Dave & Buster's Grand Sports Café" and "Jillian's," which are principally located in the United States and Canada. The consolidated financial statements include the accounts of Dave & Buster's and all wholly-owned subsidiaries. All material intercompany accounts and transactions have been eliminated in consolidation. See Note 2.

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—Our fiscal year ends on the Sunday after the Saturday closest to January 31. References to Fiscal 2005, 2004, and 2003 are to the 52 weeks ended January 29, 2006, January 30, 2005 and February 1, 2004 respectively.

Cash and cash equivalents—We consider amounts receivable from credit card companies and all highly liquid temporary investments with original maturities of three months or less to be cash equivalents.

Inventories—Food and beverage and amusements inventories are reported at the lower of cost or market determined on a first-in, first-out method. Amusements inventory includes electronic equipment, stuffed animals and small novelty items used as redemption prizes for certain midway games, as well, as supplies needed for midway operations. Smallware supplies inventories, consisting of china, glassware and kitchen utensils, are capitalized at the store opening date, or when the smallware inventory is increased due to changes in our menu, and are reviewed periodically for valuation. Smallware replacements are expensed as incurred. Inventories consist of the following:

	January 29, 2006	January 30, 2005
Food and beverage	$ 2,460	$ 2,249
Amusements	5,668	5,054
Smallware supplies	18,532	17,535
Other	4,293	4,097
	$ 30,953	$ 28,935

Property and equipment—Property and equipment are recorded at cost. Expenditures that substantially increase the useful lives of the property and equipment are capitalized, whereas costs incurred to maintain the appearance and functionality of such assets are charged to repair and maintenance expense. Interest costs and rent (through October 30, 2005) incurred during construction are capitalized and depreciated based on the estimated useful life of the underlying asset. Interest costs capitalized during the construction of facilities in 2005, 2004 and 2003 were $295, $668, and $170,

respectively. As disclosed under "Recent Accounting Pronouncements" below, beginning October 31, 2005, we no longer capitalize such rental costs. Rent costs capitalized during the construction period of facilities opened in fiscal 2005, 2004 and 2003 were $469, $187 and $0, respectively.

Property and equipment, excluding most games, are depreciated using the straight-line method over the estimated useful life of the assets. Games are generally depreciated on the 150 percent declining-balance method over the estimated useful life of the assets. Reviews are performed regularly to determine whether facts or circumstances exist that indicate the carrying values of our property and equipment are impaired. We assess the recoverability of our property and equipment by comparing the projected future undiscounted net cash flows associated with these assets to their respective carrying amounts. Impairment, if any, is based on the excess of the carrying amount over the estimated fair market value of the assets.

Goodwill and other intangible assets—In accordance with Statement of Financial Accounting Standards (SFAS) No. 142, "Goodwill and Other Intangible Assets," goodwill is no longer amortized, but instead is reviewed for impairment at least annually. We have no recorded amounts of goodwill. Intangible assets consist of the value assigned to the trademark and trade name in the acquisition of certain assets of Jillian's Entertainment Holdings, Inc. in November 2004. See Note 4. These assets have indefinite lives and, therefore, are not amortized, but are tested for impairment at least annually. The carrying value of these intangible assets was $7,482 as of January 29, 2006 and January 30, 2005, and is included in other assets and deferred charges.

Income taxes—We use 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.

The calculation of our tax liabilities involves significant judgment and evaluation of uncertainties in the interpretation of complex tax regulations. As a result, we have established reserves for taxes that may become payable in future years as a result of audits by tax authorities. Tax reserves are reviewed regularly pursuant to Statement of Financial Accounting Standard No. 5 "Accounting for Contingencies." Tax reserves are adjusted as events occur that affect our potential liability for additional taxes, such as the expiration of statutes of limitations, conclusion of tax audits, identification of additional exposure based on current calculations, identification of new issues, or the issuance of statutory or administrative guidance or rendering of a court decision affecting a particular issue.

Stock-based compensation—In June 2005, our stockholders approved the adoption of the Dave & Buster's 2005 Long-Term Incentive Plan ("2005 Incentive Plan"). The 2005 Incentive Plan is similar in purpose to, and replaced, our previously adopted Dave & Buster's 1995 Stock Incentive Plan and Dave & Buster's 1996 Stock Option Plan for Outside Directors. These plans are described more fully in Note 10. Through January 29, 2006, we have elected to follow recognition and measurement principles of Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" (APB No. 25), in accounting for stock-based awards to our employees and directors. Under APB No. 25, if the exercise price of an employee's stock options equals or exceeds the market price of the underlying stock on the date of grant, no compensation expense is recognized. In connection with the merger discussed in Note 2, all restricted stock was converted into the right to receive $18.05 per share and all

outstanding options to acquire our common stock was converted into the right to receive an amount in cash equal to the difference between the per share exercise price and $18.05.

Although SFAS No. 123, "Accounting for Stock-Based Compensation," allows us to continue to follow APB No. 25 guidelines, we are required to disclose pro forma net income (loss) and net income (loss) per share as if we had adopted the fair based method prescribed by SFAS No. 123. The pro forma impact of applying SFAS No. 123 in fiscal 2005, 2004 and 2003 is not necessarily representative of the pro forma impact in future years. Our pro forma information is as follows:

	Fiscal Year Ended		
	January 29, 2006	January 30, 2005	February 1, 2004
Net income, as reported	$ 4,288	$ 12,880	$ 10,921
Stock compensation expenses recorded under the intrinsic method, net of income taxes	564	357	196
Pro forma stock compensation expense recorded under the fair value method, net of income taxes	(820)	(1,180)	(801)
Pro forma net income	$ 4,032	$ 12,057	$ 10,316

Inputs used for the fair value method for our employee stock options are as follows:

	Fiscal Year Ended		
	January 29, 2006	January 30, 2005	February 1, 2004
Volatility	0.55	0.56	0.59
Weighted-average expected lives	4.05	5.00	4.40
Weighted-average risk-free interest rates	3.98%	3.58%	2.82%
Weighted-average fair value of options granted	$ 14.10	$ 9.41	$ 5.05

Foreign currency translation—The financial statements related to our operations of our Toronto complex are prepared in Canadian dollars. Income statement amounts are translated at average exchange rates for each period, while the assets and liabilities are translated at year-end exchange rates. Translation adjustments are included in stockholders' equity as a component of comprehensive income.

Revenue recognition—Food and beverage revenues are recorded at point of service. Amusement revenues consist primarily of deposits on power cards used by customers to activate most of our midway games. These deposits are generally recognized at the time of sale rather than when utilized, as the estimated amount of unused deposits which will be used for future game activations has historically not been material to our financial position or results of operations.

Foreign license revenues are deferred until the Company fulfills its obligations under license agreements. The license agreements provide for continuing royalty fees based on a percentage of gross

revenues, which are recognized when realization is assured. Revenue from international licensees for 2005, 2004 and 2003 was $604, $627 and $331, respectively.

Amusements costs of products—Certain of our midway games allow customers to earn coupons which may be redeemed for prizes, including electronic equipment, sports memorabilia, stuffed animals, clothing and small novelty items. The cost of these prizes is included in the cost of amusement products and is generally recorded when the coupons are redeemed, rather than as the coupons are earned, as the estimated amount of earned coupons which will be redeemed in future periods has historically not been material to our financial position or results of operations.

Advertising costs—Advertising costs are recorded as expense in the period in which the costs are incurred or the first time the advertising takes place. Advertising expenses were $15,089, $12,256 and $8,023 for 2005, 2004 and 2003, respectively.

Startup costs—Startup costs include costs associated with the opening and organizing of new complexes or conversion of existing complexes, including the cost of feasibility studies, staff-training and recruiting and travel costs for employees engaged in such startup activities. All startup are expensed as incurred. Through October 30, 2005, rent incurred between the time construction is substantially completed and the time the complex opens was included in startup costs. Beginning October 31,2005, all rent incurred during the construction period is expensed and classified as a component of startup costs.

Lease accounting—Rent is computed on a straight line basis over the lease term. The lease term commences on the date when the Company takes possession and has the right to control the use of the leased premises. The lease term includes the initial non-cancelable lease term plus any periods covered by renewal options that the Company considers reasonably assured of exercising. Construction allowances received from the lessor to reimburse the Company for the cost of leasehold improvements are recorded as deferred lease liabilities and amortized as a reduction rent of over the term of the lease.

Comprehensive income—Comprehensive income is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. In addition to net income, unrealized foreign currency translation gain is included in comprehensive income. Unrealized translation gains for 2005 and 2004 was $120 and $225, respectively. Unrealized translation gains or losses in prior years were not material.

Recent accounting pronouncements—In October 2005, the Financial Accounting Standards Board (FASB) issued a FASB Staff Position (FSP), FAS 13-1, "Accounting for Rental Costs Incurred during a Construction Period." The FSP addresses accounting for rental costs associated with building and ground operating leases that are incurred during a construction period. The Board concluded that such costs incurred during a construction period should be recognized as rental expense. The provisions of this FSP must be applied to the first reporting period beginning after December 15, 2005. Early adoption was permitted. Accordingly, effective October 31, 2005, we no longer capitalize rent incurred during the construction period. The impact of this new standard on our future financial statements will be dependent on the number of complexes opened each period and the terms of the related lease

agreements. Rent capitalized during the construction period of facilities opened in fiscal 2005, 2004, and 2003 were $469, $187 and $0, respectively.

In December 2004, the FASB issued SFAS No. 123R, "Share-Based Payments," SFAS No. 123R is a revision of SFAS No. 123, "Accounting for Stock Based Compensation," and supersedes APB 25. Among other items, SFAS 123R eliminates the use of APB 25 and the intrinsic value method of accounting, and requires companies to recognize in the financial statements the cost of employee services received in exchange for awards of equity instruments, based on the fair value of those awards on the grant date. The effective date of SFAS 123R is the first reporting period beginning after June 15, 2005. In connection with the merger discussed in Note 2, all outstanding options or warrants to acquire our common stock were converted into the right to receive an amount in cash equal to the difference between the per share exercise price and $18.05, without interest, less any applicable withholding taxes. Although the adoption of SFAS 123R may have a significant effect on our results of operations for the period January 29, 2006 to the date of the merger, it will not have an impact on our consolidated financial position. The impact of SFAS 123R on our results of operations for periods after the merger cannot be predicted at this time, because no additional options have been issued or are currently planned to be issued.

Note 2: Merger with WS Midway Acquisition Sub, Inc.

On December 8, 2005, Dave & Buster's entered into an Agreement and Plan of Merger, pursuant to which WS Midway Holdings, Inc., a newly-formed Delaware corporation, would acquire Dave & Buster's through the merger (the "Merger") of WS Midway Acquisition Sub, Inc., a newly-formed Missouri corporation and a direct, wholly-owned subsidiary of WS Midway Holdings, Inc., with and into Dave & Buster's. Affiliates of Wellspring Capital Management LLC ("Wellspring") and HBK Investments L.P. ("HBK") control approximately 82% and 18%, respectively, of the outstanding capital stock of WS Midway Holdings, Inc. The merger was completed on March 8, 2006, with Dave & Buster's as the surviving corporation.

At the effective time of the Merger, the following events occurred:

All outstanding shares of Dave & Buster's common stock (including those issued upon the conversion of our convertible subordinated notes), other than shares held by WS Midway Holdings, Inc. or held by stockholders, if any, who perfect their appraisal rights under Missouri law, were converted into the right to receive $18.05 per share without interest, less any applicable withholding taxes;

All outstanding options or warrants to acquire our common stock were converted into the right to receive an amount in cash equal to the difference between the per share exercise price and $18.05, without interest, less any applicable withholding taxes; and

To the extent not converted into shares of our common stock, we redeemed for cash our convertible subordinated notes due 2008 and the indenture governing the convertible notes ceased to have any effect.

The total cash requirements of the Merger of $336,100, including repayment of our existing debt and transaction costs, was funded through $108,100 of equity investments by affiliates of Wellspring and HBK in our common stock, the net proceeds from the private placement of $175,000 aggregate principal amount of 11.25% senior notes (Note 6) and borrowings under our new senior secured credit facility (Note 6). The Merger will be accounted for as a purchase in conformity with SFAS 141, "Business Combinations." Accordingly, the assets and liabilities will be recorded at their fair value. As of the date of the financial statements, the valuation studies necessary to determine the fair value of the assets acquired and liabilities assumed had not been completed.

Holders of up to 2.6 million shares have notified us that they intend to exercise dissenter rights and initiate proceedings under Section 351.455 of the General and Business Corporation Law of Missouri to demand fair value with respect to their shares. The portion of the merger consideration otherwise payable in respect of the dissenting shares is expected to be borrowed under the new term loan facility pursuant to a delayed drawdown.

Payments, if any, in respect of the dissenting shares in excess of the merger consideration of $18.05 per share will be funded from cash flow from operations, borrowings under the new senior secured credit facility and /or proceeds of equity contributions. We do not believe that the payments, if any, we may make in respect of the dissenting shares in excess of the merger consideration of $18.05 per share would be material to our consolidated financial condition, results of operations or liquidity. However, no assurance can be given that the dissenting shareholders will not be successful in obtaining an amount per share that exceeds the merger consideration of $18.05.

Note 3: Acquisitions and disposals

On October 6, 2003, we completed the purchase of the Dave & Buster's complex in Toronto, Canada from a third party that operated the facility under a license agreement with us. The purchase price was $4,122, including $3,600 in cash plus the forgiveness of $522 in certain receivables due from the licensee. The purchase gave us the opportunity to expand our North American operations. The aggregate cost of the acquisition of $4,122 was allocated to the assets acquired and the liabilities assumed based on their estimated fair value. As a result, $4,750 was allocated to property and equipment, including leasehold improvements and $(628) to working capital items.

On November 1, 2004, we completed the acquisition of nine Jillian's entertainment complexes located in major metropolitan areas in the states of Arizona, Maryland, Minnesota, North Carolina, New York, Pennsylvania, Tennessee, and Texas. The acquisition was completed pursuant to an asset purchase agreement for $45,747 in cash. In addition, we incurred $2,369 in costs related to the transaction. The cash requirements of the acquisition were funded from borrowings under our amended senior bank credit facility. See Note 7.

The aggregate cost of the acquisition of $48,116 was allocated to the net assets acquired based on their estimated fair values as determined by an independent appraisal. As a result, $31,103 was allocated to leasehold improvements, $9,343 to other property and equipment, $7,482 to the trade name and related trademarks, and $188 to working capital items. The results of the operations of the acquired complexes have been included in our consolidated results beginning on the date of acquisition.

The historical results of operations of the acquired complexes were not significant compared to our historical consolidated results of operations.

On August 28, 2005, a subsidiary of ours closed the acquired Jillian's complex located at the Mall of America in Bloomington, Minnesota due to continuing operating losses attributable to this complex and our unsuccessful efforts to renegotiate the terms of the related leases. As a result of the closing, we recorded total pre-tax charges of approximately $3,000 in the initial thirty-nine weeks of fiscal 2005. The charges included $2,500 of second quarter expenses of additional depreciation, amortization and impairment of the assets that were abandoned and whose carrying value was not recoverable as of July 31, 2005. This portion of the charge is included in depreciation and amortization expense in the accompanying consolidated statements of operations. Additionally, $500 of the charges was recorded during the third quarter and related to severance and other costs required to complete the closure of the complex (approximately $400 in operating payroll and benefits and approximately $100 in other store operating expenses). All of these costs were paid in the third quarter of 2005.

In order to address lower than anticipated levels of post-acquisition revenues and operating results from our acquired Jillian's stores, we are converting several of our Jillian's locations to our new "Dave & Buster's Grand Sports Café" brand. We believe this conversion will enhance and accelerate our efforts to improve the results of operations of these stores from those achieved since completion of the Jillian's acquisition. We began converting the stores in September 2005, and converted five of the stores in fiscal 2005. We converted one additional store in the first quarter of 2006. We will continue to evaluate the performance of the converted stores in order to determine if conversion of the remaining units is appropriate.

In October 2005, we acquired the general partner interest in a limited partnership which owns a Jillian's complex in the Discover Mills Mall near Atlanta, Georgia for a total cost of approximately $1,169. The limited partners currently earn a preferred return on their remaining invested capital. We currently have a 50.1 percent interest in the income or losses of the partnership. After deducting the preferred return to the limited partner, our interest in the income or losses of the partnership is not expected to be significant to our results of operations until the limited partners receive a full return of their invested capital and preferred return. We also manage the complex under a management agreement for which we receive a fee of 4.0 percent of operating revenues annually. We account for our general partner interest using the equity method due to the substantive participative rights of the limited partners in the operations of the partnership. Our equity interest in the results of the partnership through January 29, 2006 was not material to our consolidated results of operations.

Note 4: Property and equipment

Property and equipment consist of the following (in thousands):

	Estimated Depreciable Lives (In Years)	January 29, 2006	January 30, 2005
Land	—	$ 6,706	$ 6,706
Buildings	40	45,418	44,194
Leasehold and building improvements	Shorter of 20 or lease term	264,912	242,099
Furniture, fixtures and equipment	5-10	147,994	123,680
Games	5	106,307	98,886
Construction in progress		10,705	4,504
Total cost		582,042	520,069
Less accumulated depreciation		225,910	188,591
Property and equipment, net		$ 356,132	$ 331,478

Note 5: Accrued liabilities

Accrued liabilities consist of the following (in thousands):

	January 29, 2006	January 30, 2005
Compensation and benefits	$ 5,708	$ 6,084
Sales and use taxes	2,462	2,471
Real estate taxes	1,796	1,921
Other	10,004	7,643
Total accrued liabilities	$ 19,970	$ 18,119

Note 6: Long-term debt

Long-term debt consisted of the following (in thousands):

	January 29, 2006	January 30, 2005
Revolving credit facility	$ 5,439	$ 5,871
Term debt facility	45,375	53,167
Convertible subordinated notes, net of discount	29,361	29,105
	80,175	88,143
Less current installments	9,625	7,792
Long-term debt, less current installments	$ 70,550	$ 80,351

On November 1, 2004, we closed on the second amendment to our restated senior bank credit facility. The amended facility includes a $60,000 revolving credit facility and a $55,000 term debt facility. The revolving credit facility is secured by all assets of the Company and may be used for borrowings or letters of credit. At January 29, 2006, we had $6,212 letters of credit outstanding, leaving approximately $48,349 available for additional borrowings or letters of credit. Borrowings under the credit facility were utilized to fund the cash requirements of Jillian's transaction (Note 4), and the costs related to the amended facility. The interest rate on the credit facility at January 29, 2006 was 6.8 percent. All borrowings under the senior bank credit facility were repaid in connection with the Merger.

On August 7, 2003, we closed a $30,000 private placement of 5.0 percent convertible subordinated notes due 2008 and warrants to purchase 574,691 shares of our common stock at $13.46 per share. The investors may convert the notes into our common stock at any time prior to the scheduled maturity date of August 7, 2008. The fair value of the warrants of $1,276 was recorded as a discount on the notes and is being amortized over the term of the notes. As a result, the effective annual interest rate on the notes was 7.5 percent. In connection with the Merger, all convertible subordinated notes were converted into the right to receive $18.05 in cash, and all warrants were converted into the right to receive an amount in cash equal to the difference between $13.46 and $18.05. We used the net proceeds of the offering to reduce the outstanding balances of our term and revolving loans under our senior bank credit facility and to fund the purchase of the Dave & Buster's complex in Toronto. See Note 4.

The fair value of our convertible subordinated notes, based on its conversion value, was approximately $41,587 at January 29, 2006. The fair value of the borrowings under the senior bank credit facility approximates their carrying value.

In 2001, we entered into an interest rate swap agreement that expires in 2007, to change a portion of our variable rate debt to fixed-rate debt. Pursuant to the swap agreement, the interest rate on notional amounts aggregating $18,400 at January 29, 2006 is fixed at 5.44 percent. The agreement has not been designated as a hedge and adjustments are recorded to mark the instrument to its fair market value as interest expense. As a result of the swap agreement, we recorded additional interest expense of $532, $1,577 and $1,863 in 2005, 2004 and 2003, respectively.

In connection with the Merger, we terminated our existing credit facility and entered into a new senior secured credit facility that will (a) provide a $100,000 term loan facility (with up to $50,000 of the term loan facility available on a delayed-draw basis for a period of six months) with a maturity of seven years from the closing date of the Merger and (b) provide a $60,000 revolving credit facility with a maturity of five years from the closing date of the Merger. The $60,000 revolving credit facility will include (i) a $20,000 letter of credit sub-facility, (ii) a $5,000 swingline sub-facility and (iii) a $5,000 (in US Dollar equivalent) sub facility available in Canadian dollars to the Canadian subsidiary. The revolving credit facility will be used to provide financing for working capital and general corporate purposes. Upon consummation of the Merger, we drew approximately $50,000 under the term loan facility, $3,000 under the new revolving credit facility and had $6,200 in letters of credit outstanding.

The interest rates per annum applicable to loans, other than swingline loans, under our new senior secured credit facility are, at our option, equal to either a base rate (or, in the case of the Canadian revolving credit facility, a Canadian prime rate) or a Eurodollar rate (or, in the case of the Canadian revolving credit facility, a Canadian cost of funds rate) for one-, two-, three- or six-month (or, in the case of the Canadian revolving credit facility, 30, 60, 90 or 180-day) interest periods chosen by us, in each case, plus an applicable margin percentage. Swingline loans bear interest at the base rate plus the applicable margin.

Our new senior secured credit facility requires that we comply with the following financial covenants: a minimum fixed charge coverage ratio test and a maximum leverage ratio test. We will initially be required to maintain a minimum fixed charge coverage ratio of 1.00:1.00 and a maximum leverage ratio of 4.75:1.00 as of the end of each fiscal quarter, which will become more restrictive over time. In addition, our new senior secured credit facility includes negative covenants restricting or limiting our, WS Midway Holdings, Inc.'s and our subsidiaries' ability to, among other things incur additional indebtedness, make capital expenditures and sell or acquire assets.

Our new senior secured credit facility also contains certain customary representations and warranties, affirmative covenants and events of default, including payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults and cross-acceleration to certain indebtedness, certain events of bankruptcy, certain events under ERISA, material judgments, actual or asserted failures of any guarantee or security document supporting our new senior secured credit facility to be in full force and effect and a change of control. If an event of default occurs, the lenders under our new senior secured credit facility would be entitled to take various actions, including acceleration of amounts due under our new senior secured credit facility and all actions permitted to be taken by a secured creditor.

In connection with the Merger on March 8, 2006, we closed a proposed private placement of $175,000 aggregate principal amount of senior notes. The notes are general unsecured, unsubordinated obligations of the Company and mature on March 15, 2014. Interest on the notes compounds semi-annually and accrues at the rate of 11.25% per annum. On or after March 15, 2010, we may redeem all or, from time to time, a part of the senior notes upon not less than 30 nor more than 60 days notice, at redemption prices (expressed as a percentage of principal amount) plus accrued and unpaid interest on the senior notes. Prior to March 15, 2010, we may on any one or more occasions redeem up to 35% of the original principal amount of the notes using the proceeds of certain equity offerings completed before March 15, 2010.

Our new senior notes restrict our ability to incur indebtedness, outside of our new senior credit facility, unless our consolidated coverage ratio exceeds 2.00:1.00 or other financial and operational requirements are met. Additionally, the terms of the notes restrict our ability to make certain payments to affiliated entities.

The following table sets forth the Company's future debt payment obligations as January 29, 2006 and following the Merger:

Fiscal Year	Debt Outstanding at January 29, 2006	Following the Merger
2006	$ 9,625	$ 375
2007	11,458	500
2008	43,292	500
Thereafter	16,439	226,625
Total future payments	80,814	228,000
Less: Unamortized discount on convertible debt	(639)	—
Current installments of long-term debt	(9,625)	(375)
Total long-term debt	$ 70,550	$ 227,625

Note 7: Income taxes

The provision for income taxes is as follows:

	Fiscal Year Ended		
	January 29, 2006	January 30, 2005	February 1, 2004
Current expense (benefit)			
Federal	$ 1,211	$ 9,813	$ 4,353
State and local	585	932	444
Deferred expense (benefit)	220	(3,820)	822
Total provision for income taxes	$ 2,016	$ 6,925	$ 5,619

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

	January 29, 2006	January 30, 2005
Deferred tax liabilities:		
Property and equipment	$ 11,501	$ 9,941
Prepaid expenses	496	478
Smallware supplies	5,967	5,332
Other	152	864
Total deferred tax liabilities	18,116	16,615
Deferred tax assets:		
Leasing transactions	6,051	4,934
Deferred gain	54	54
Worker's compensation	831	666
Other	187	—
Total deferred tax assets	7,123	5,654
Valuation allowance for deferred tax assets	(187)	—
Total deferred tax assets net of valuation allowance	6,936	5,654
Net deferred tax liability	$ 11,180	$ 10,961

During 2005, we established a valuation allowance against our net Canadian deferred tax assets. The existence of sustained losses prevents us from concluding that it is more likely than not that the Canadian deferred tax assets will be realized. In general, we anticipate reversing the valuation allowance associated with deferred tax assets of our Canadian subsidiary when the underlying deferred tax assets are realized or at the time the actual results have demonstrated a sustained profitability and the projected results support our ability to realize the deferred tax assets currently being reserved.

The reconciliation of the federal statutory rate to our effective income tax rate follows:

	Fiscal Year Ended		
	January 29, 2006	January 30, 2005	February 1, 2004
Federal corporate statutory rate	35.0%	35.0%	35.0%
State and local income taxes, net of federal income tax benefit	7.8%	2.7%	2.2%
Foreign taxes	3.2%	(2.1)%	—
Nondeductible expenses	0.8%	2.0%	2.8%
Tax credits	(17.9)%	(4.2)%	(6.6)%
Other	3.1%	1.6%	0.6%
Effective tax rate	32.0%	35.0%	34.0%

Our effective tax rate differs from the statutory rate primarily due to the deduction for FICA tip credits and state income taxes.

Note 8: Leases

We lease certain property and equipment under operating leases. Some of the leases include options for renewal or extension on various terms. Most of our leases require the Company to pay property taxes, insurance and maintenance of the leased assets. Certain leases also have provisions for additional percentage rentals based on revenues. For 2005, 2004 and 2003, rent expense for operating leases was $34,104, $24,290 and $21,540, respectively, including contingent rentals of $969, $890 and $683, respectively. At January 29, 2006, future minimum lease payments, including any periods covered by renewal options the Company is reasonably assured of exercising, (including the sale/leaseback transactions described below) are:

2006	2007	2008	2009	2010	Thereafter	Total
$ 40,054	$ 39,062	$ 38,632	$ 38,906	$ 38,821	$ 346,485	$ 541,960

During 2000 and 2001, we completed the sale/leaseback of three complexes and our corporate headquarters. Cash proceeds of $24,774 were received along with twenty-year notes aggregating $6,750. The notes bear interest of 7 percent to 7.5 percent.

Future aggregating lease obligations under the sale/leaseback agreements, which are classified as operating leases, are as follows:

2006	2007	2008	2009	2010	Thereafter	Total
$ 3,083	$ 3,125	$ 3,167	$ 3,211	$ 3,254	$ 38,202	$ 54,042

At January 29, 2006 and January 30, 2005, the aggregate balance of the notes receivable due from the lessors under the sale/leaseback agreements was $4,618 and $6,222, respectively. Future minimum principal and interest payments due to us under these notes are as follows:

2006	2007	2008	2009	2010	Thereafter	Total
$ 489	$ 489	$ 489	$ 489	$ 489	$ 5,335	$ 7,780

Note 9: Common stock

Stock-based compensation—In June 2005, our stockholders approved the adoption of the Dave & Buster's 2005 Long-Term Incentive Plan. The 2005 Incentive Plan is similar in purpose to, and replaced, our previously adopted Dave & Buster's 1995 Stock Incentive Plan and Dave & Buster's 1996 Stock Option Plan for Outside Directors. There will be no further awards or grants under those previously adopted plans, although outstanding awards and grants under those plans will remain in effect pursuant to their terms. The 2005 Incentive Plan is a stock-based long-term incentive plan, which provides for the granting of incentive stock options, non-qualified stock options, restricted stock awards, and stock appreciation rights to officers, non-employee directors and employees of the Company. A maximum of

600,000 shares of our common stock are reserved for issuance under the 2005 Incentive Plan. Lapsed, forfeited or canceled options, stock appreciation rights, or restricted stock awards do not count against these limits and can be regranted.

In 2005 and 2004, we issued 215,250 and 115,000 shares of restricted stock with market values of $17.57-$18.88 and $17.66-$18.90, respectively. The restricted shares vest over a period from date of grant through the end of fiscal year 2007 subject to the achievement of specified performance criteria and change of control events established by the Compensation Committee of the Board of Directors as described in the 2005 Incentive Plan. 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 restricted stock compensation was $726, $549 and $297 in 2005, 2004 and 2003, respectively.

A summary of the Company's stock option activity and related information is as follows (in thousands, except per share data):

	Fiscal Year Ended					
	January 29, 2006		January 30, 2005		February 1, 2004	
	Options	Exercise Price*	Options	Exercise Price*	Options	Exercise Price*
Outstanding—beginning of year	2,325	$ 12.29	2,417	$ 11.55	2,498	$ 11.79
Granted	255	18.77	277	17.30	256	9.96
Exercised	(270)	8.44	(271)	10.34	(101)	6.95
Forfeited	(76)	15.09	(98)	13.41	(236)	14.30
Outstanding—end of year	2,234	13.40	2,325	12.29	2,417	11.55
Exercisable—end of year	1,461	$ 14.55	1,680	$ 12.86	1,592	$ 13.13

* Weighted average exercise price

As of January 29, 2006, 1,917,666 options have exercise prices that range from $6.10 to $24.75, 211,250 options have exercise prices of $18.88 and 105,000 options have exercised prices that range from $7.25 to $23.75.

In connection with the Merger, which meets the change of control events described above, all restricted stock was converted into the right to receive $18.05 per share and all outstanding options to acquire our common stock vested and were converted into the right to receive an amount in cash equal to the difference between the per share exercise price and $18.05

Note 10: Earnings per share

The following table sets forth the computation of basic and diluted earnings per share (in thousands, except per share data):

	Fiscal Year Ended		
	January 29, 2006	January 30, 2005	February 1, 2004
Numerator for basic earnings per common share—net income	$ 4,288	$ 12,880	$ 10,921
Impact of convertible debt interest and fees	1,401	1,479	662
Income applicable to common shareholders	$ 5,689	$ 14,359	$ 11,583
Denominator for basic earnings per common share—weighted average shares	13,598	13,331	13,128
Dilutive securities:			
Employee stock options and warrants	646	887	357
Convertible debt	2,322	2,322	1,161
Denominator for diluted earnings per common share—adjusted weighted average shares	16,566	16,540	14,646
Basic earnings per common share	$ 0.32	$ 0.97	$ 0.83
Diluted earnings per common share	$ 0.34	$ 0.87	$ 0.79

In 2005, 2004 and 2003, options to purchase 906,000, 713,000 and 870,000 shares of common stock, respectively, were not included in the computation of diluted net income per share because the exercise price was greater than the market price and the effect would have been antidilutive.

Note 11: 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 percent to 100 percent of employee contributions, up to a maximum of 6 percent of eligible employee compensation, as defined. Employees may elect to contribute up to 50 percent of their eligible compensation on a pretax basis. Benefits under the 401(k) Plan are limited to the assets of the 401(k) Plan. The Company's contributions to the 401(k) plan were $218, $209 and $204 for 2005, 2004 and 2003, respectively.

Note 12: 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 13: Quarterly financial information (unaudited)

	Fiscal Year Ended January 29, 2006			
	First	Second	Third	Fourth
	(in thousands, except per share amounts)			
Total revenues	$ 115,735	$ 110,829	$ 105,645	$ 131,243
Income (loss) before provision for income taxes	7,183	(1,977)	(5,039)	6,137
Net income (loss)	4,561	(1,256)	(3,200)	4,183

	Fiscal Year Ended January 30, 2005			
	First	Second	Third	Fourth
Total revenues	$ 94,966	$ 89,844	$ 84,043	$ 121,414
Income (loss) before provision for income taxes	5,452	3,402	(139)	11,089
Net income (loss)	3,600	2,202	(88)	7,166

As discussed in Note 3, in the fourth quarter of fiscal 2004, we completed the acquisition of nine Jillian's locations.

As discussed in Note 3, in the third quarter of fiscal 2005, a subsidiary of ours closed the acquired Jillian's complex located at the Mall of America in Bloomington, Minnesota due to continuing operating losses attributable to this complex and our unsuccessful efforts to renegotiate the terms of the related leases. As a result of the closing, we recorded total pre-tax charges of approximately $3,000 in the initial thirty-nine weeks of fiscal 2005. The charges included $2,500 of second quarter expenses of additional depreciation, amortization and impairment of the assets that were abandoned and whose carrying value was not recoverable as of July 31, 2005. Additionally, $500 of the charges was recorded during the third quarter of 2005 and related to severance and other costs required to complete the closure of the complex.

Startup costs impact our trends in our quarterly results of operations. During 2005, we opened the Omaha, Buffalo, and Kansas City locations in the second, third, and fourth quarters, respectively. We opened our Santa Anita location in the third quarter of 2004. Startup costs were also impacted in fiscal 2005 due to the conversion of five of our Jillian's locations to our new "Dave & Buster's Grand Sports Café" brand. Startup costs incurred were $78, $804, $1,495 and $2,948 in the first, second, third and fourth quarters of 2005, respectively, compared to $0, $136, $876 and $283 in the first, second, third and fourth quarters of 2004, respectively.

As discussed in Note 1, effective October 31, 2005, we no longer capitalize rent incurred during the construction period.

DAVE & BUSTER'S, INC.

CONSOLIDATED BALANCE SHEETS

(unaudited)

	April 30, 2006 (Successor)	January 29, 2006 (Predecessor)
	(In thousands, except share amounts)	
Assets		
Current assets:		
Cash and cash equivalents	$ 15,323	$ 7,582
Inventories	13,738	12,469
Prepaid expenses	3,307	2,985
Deferred income taxes	3,894	—
Other current assets	4,656	4,194
Total current assets	40,918	27,230
Property and equipment, net	345,185	374,616
Tradename	63,000	—
Goodwill	67,557	—
Other assets and deferred charges	26,234	21,216
Total assets	$ 542,894	$ 423,062
Liabilities and stockholders' equity		
Current liabilities:		
Current installments of long-term debt (Note 4)	$ 500	$ 9,625
Accounts payable	19,190	25,069
Accrued liabilities	33,963	21,294
Income taxes payable	1,242	2,669
Deferred income taxes	—	5,779
Total current liabilities	54,895	64,436
Deferred income taxes	38,187	5,401
Deferred rent liability	49,292	74,583
Other liabilities	5,652	2,872
Payable to dissenting shareholders	51,733	—
Long-term debt, less current installments (Note 4)	236,914	70,550
Commitments and contingencies (Note 5)		
Stockholders' equity (Note 1):		
Predecessor:		
Common stock, $0.01 par value, 50,000,000 authorized; 13,722,750 issued and outstanding as of January 29, 2006	—	137
Less treasury stock, at cost (175,000 shares)	—	(1,846)
Successor:		
Common stock, $0.01 par value, 1,000 authorized; 100 issued and outstanding as of April 30, 2006	—	—
Preferred stock, 10,000,000 authorized; none issued	—	—
Restricted stock awards	—	2,180
Paid-in capital	108,100	125,312
Accumulated comprehensive income	149	345
Retained earnings (deficit)	(2,028)	79,092
Total stockholders' equity	106,221	205,220
Total liabilities and stockholders' equity	$ 542,894	$ 423,062

See accompanying notes to consolidated financial statements.

DAVE & BUSTER'S, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS

(unaudited)

	For the 54 Day Period from March 8, 2006 to April 30, 2006 (Successor)	For the 37 Day Period from January 30, 2006 to March 7, 2006 (Predecessor)	Thirteen weeks ended May 1, 2005 (Predecessor)
		(In thousands)	
Food and beverage revenues	$ 41,502	$ 27,562	$ 61,392
Amusement and other revenues	34,932	22,847	54,343
Total revenues	76,434	50,409	115,735
Cost of food and beverage	10,755	7,111	16,028
Cost of amusement and other	4,659	3,183	6,477
Total cost of products	15,414	10,294	22,505
Operating payroll and benefits	22,028	14,293	32,775
Other store operating expenses	23,573	15,577	33,988
General and administrative expenses	5,272	3,480	7,692
Depreciation and amortization expense	6,741	4,328	9,741
Startup costs	1,406	880	78
Total operating costs	74,434	48,852	106,779
Operating income	2,000	1,557	8,956
Interest expense, net	5,244	649	1,773
Income (loss) before provision for income taxes	(3,244)	908	7,183
Provision (benefit) for income taxes	(1,216)	422	2,622
Net income (loss)	$ (2,028)	$ 486	$ 4,561

See accompanying notes to consolidated financial statements.

DAVE & BUSTER'S, INC.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

(unaudited)

	Common Stock							
	Shares	Amount	Paid-in Capital	Treasury Stock	Restricted Stock	Accumulated Other Comprehensive Income	Retained Earnings (Deficit)	Total
					(In thousands)			
Balance, January 29, 2006 (Predecessor)	13,723	$ 137	$ 125,312	$ (1,846)	$ 2,180	$ 345	$ 79,092	$ 205,220
Net earnings	—	—	—	—	—	—	486	486
Unrealized foreign currency translation loss (net of tax)	—	—	—	—	—	(3)	—	(3)
Comprehensive income								483
Stock option exercises	5	—	528	—	—	—	—	528
Tax benefit related to stock option exercises	—	—	10	—	—	—	—	10
Stock-based compensation	—	—	25	—	—	—	—	25
Amortization of restricted stock awards	—	—	—	—	61	—	—	61
Merger transaction	(13,728)	(137)	(125,875)	1,846	(2,241)	(342)	(79,578)	(206,327)
Balance, March 8, 2006 (Successor)	—	—	—	—	—	—	—	—
Initial investment by WS Midway Acquisition Sub, Inc. and affiliates	100	—	108,100	—	—	—	—	$ 108,100
Net loss	—	—	—	—	—	—	(2,028)	(2,028)
Unrealized foreign currency translation gain (net of tax)	—	—	—	—	—	149	—	149
Comprehensive loss								(1,879)
Balance April 30, 2006 (Successor)	100	—	$ 108,100	—	—	$ 149	$ (2,028)	$ 106,221

See accompanying notes to consolidated financial statements.

DAVE & BUSTER'S, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(unaudited)

	For the 54 Day Period from March 8, 2006 to April 30, 2006	For the 37 Day Period from January 30, 2006 to March 7, 2006	Thirteen weeks ended May 1, 2005
	Successor	Predecessor	
	(In thousands)		
Cash flows from operating activities:			
Net income (loss)	$ (2,028)	$ 486	$ 4,561
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization expense	6,741	4,328	9,741
Deferred income tax expense (benefit)	—	(1,088)	(166)
Tax benefit related to stock options	—	10	165
Restricted stock awards	—	61	178
Stock-based compensation charges	—	25	—
Warrants related to convertible debt	—	21	63
Other, net	175	7	(36)
Changes in operating assets and liabilities, net of effect of business acquisitions			
Inventories	(1,197)	(72)	280
Prepaid expenses	(153)	(169)	(891)
Other current assets	(461)	(1)	(1,934)
Other assets and deferred charges	1,386	(66)	1,150
Accounts payable	1,840	(3,916)	(385)
Accrued liabilities	1,801	6,918	825
Income taxes payable	(2,931)	1,504	(2,967)
Deferred rent liability	67	2,502	1,064
Other liabilities	(51)	191	1,721
Net cash provided by operating activities	5,189	10,741	13,369
Cash flows from investing activities:			
Capital expenditures	(5,955)	(10,600)	(10,866)
Purchase of Predecessor common stock	(274,711)	—	—
Proceeds from sales of property and equipment	77	—	17
Net cash used in investing activities	(280,589)	(10,600)	(10,849)
Cash flows from financing activities:			
Borrowings under revolving credit facility	12,414	6,000	—
Repayments of long-term debt	(51,137)	(6,439)	(5,352)
Borrowings under senior secured credit facility	50,000	—	—
Borrowings under senior notes	175,000	—	—
Initial investment by WS Midway Acquisition Sub, Inc. and affiliates	108,100	—	—
Debt issuance costs	(11,466)	—	—
Proceeds from exercises of stock options	—	528	385
Net cash provided by (used in) financing activities	282,911	89	(4,967)
Increase (decrease) in cash and cash equivalents	7,511	230	(2,447)
Beginning cash and cash equivalents	7,812	7,582	7,624
Ending cash and cash equivalents	$ 15,323	$ 7,812	$ 5,177
Supplemental disclosures of cash flow information:			
Cash paid for income taxes—net of refunds	$ 1,596	$ —	$ 5,655
Cash paid for interest, net of amounts capitalized	$ 1,209	$ 878	$ 1,232

See accompanying notes to consolidated financial statements.

Note 1: Merger with WS Midway Acquisition Sub, Inc.

Dave & Buster's, Inc. ("Dave & Buster's" or the "Company"), a Missouri corporation, was acquired on March 8, 2006, by WS Midway Holdings, Inc., a newly-formed Delaware corporation, acquired Dave & Buster's through the merger (the "Merger") of WS Midway Acquisition Sub, Inc., a newly-formed Missouri corporation and a direct, wholly-owned subsidiary of WS Midway Holdings, Inc., with and into Dave & Buster's with Dave & Buster's as the surviving corporation. Affiliates of Wellspring Capital Management LLC ("Wellspring") and HBK Investments L.P. ("HBK") control approximately 82% and 18%, respectively, of the outstanding capital stock of WS Midway Holdings, Inc. Although we continue as the same legal entity after the Merger, the accompanying condensed consolidated statements of operations, stockholders equity and cash flows present our results of operations and cash flows for the periods preceding the Merger ("Predecessor") and the period succeeding the Merger ("Successor"), respectively.

At the effective time of the Merger, the following events occurred:

- All outstanding shares of Dave & Buster's common stock (including those issued upon the conversion of our convertible subordinated notes), other than shares held by WS Midway Holdings, Inc., were converted into the right to receive $18.05 per share without interest, less any applicable withholding taxes;

- All outstanding options or warrants to acquire our common stock were converted into the right to receive an amount in cash equal to the difference between the per share exercise price and $18.05, without interest, less any applicable withholding taxes; and

- To the extent not converted into shares of our common stock, we redeemed for cash our convertible subordinated notes due 2008 and the indenture governing the convertible notes ceased to have any effect.

The Merger transactions resulted in a change in ownership of 100 percent of the Company's outstanding common stock and is being accounted for in accordance with Statement of Financial Accounting Standards ("SFAS") 141, "Business Combinations,". The purchase price paid in the Merger has been "pushed down" to the Company's financial statements and is allocated to record the acquired assets and liabilities assumed based on their fair value. The Merger and the allocation of the purchase price have been recorded as of March 8, 2006 based on preliminary valuation studies. The allocation of the purchase price is subject to change based on completion of such studies, resolution of matters related to dissenting shareholders referred to below and the resolution of certain personnel matters. The adjustments, if any, arising out of the finalization of the allocation of the purchase price will not impact our cash flows including cash interest and rent. However, such adjustments could result in material increases or decreases to net income and earnings before interest expense, income taxes, depreciation and amortization. Further revisions to the purchase price allocation will be made as additional information becomes available. The purchase price was approximately $389,412 of which

approximately $337,679 has been paid as of July 24, 2006. The sources and uses of funds in connection with the Merger are summarized below:

Sources		
Revolving credit facility	$	4,376
Senior secured credit facility		50,000
Senior notes		175,000
Other liabilities—dissenting shareholders		51,733
Equity contribution		108,100
Cash on hand		203
Total sources	$	389,412
Uses		
Consideration paid to stockholders	$	213,102
Consideration paid to convertible note and warrant holders		44,390
Consideration paid to option holders		9,279
Consideration payable to dissenting shareholders		51,733
Payment of existing debt		51,137
Transaction costs		19,771
Total uses	$	389,412

Holders of up to approximately 2.6 million shares notified us of their intent to exercise dissenter rights and initiate proceedings under Section 351.455 of the General and Business Corporation Law of Missouri to demand fair value with respect to their shares. On July 10, 2006, the Company and all dissenting shareholders reached an agreement which provides, among other things, for the permanent and irrevocable settlement of all claims between the parties associated with the Merger or the dissenting action. The settlement agreement requires the Company to pay approximately $51,733 to the shareholders on or before August 15, 2006.

Payments of the settlement will be funded from borrowings under the Senior Credit Facility. Accordingly, we have recorded a long term liability of $51,733 related to our obligation under the settlement agreement.

In connection with the preliminary purchase price allocation, our estimates of the fair values of assets acquired and liabilities assumed are based primarily on preliminary valuation results from independent valuation specialists. As of April 30, 2006, we have recorded preliminary purchase accounting adjustments to increase the carrying value of our property and equipment, to establish intangible assets for our tradenames and trademarks and to revalue our deferred rent liability, among other things. This allocation of the purchase price is preliminary and subject to finalization of the independent valuation and our analysis of the fair value of other assets and liabilities as of the date of the Merger. The final allocation of the purchase price may result in additional adjustments to the recorded amounts of our assets and liabilities and may also result in adjustments to depreciation and amortization expense, rent expense, other operating costs, and the provision for income taxes. The adjustments, if any, arising out of the finalization of the purchase allocation will not impact our cash

flows including cash interest and rent. However, such adjustments could result in material increases or decreases to operating income and net income. Further revisions to the purchase price allocation will be made as additional information becomes available.

The purchase price was determined and has been preliminarily allocated as follows:

Purchase consideration	$	337,679
Accrued liability for dissenting shareholder rights		51,733
Total consideration		389,412
Allocation of purchase price:		
Working capital deficit		(20,599)
Property and equipment		344,701
Indefinite lived intangibles		130,557
Definite lived intangibles		8,000
Other long term assets		19,868
Rent liability		(49,225)
Deferred income taxes		(38,187)
Other long term liabilities		(5,703)
	$	389,412

In connection with the Merger, the Successor incurred approximately $1,500 in Merger related costs, primarily a bridge funding fee, that is recorded in the statement of operations for the 54 day period from March 8, 2006 to April 30, 2006 as interest expense.

Indefinite lived intangibles include our tradenames in the amount of $63,000 and goodwill in the amount of $67,557 and are not subject to amortization, but instead are reviewed for impairment at least annually.

Definite lived intangible assets, primarily including certain trademarks, are amortized in a straight line basis over their expected useful lives of five years as follows:

March 8, 2006 to February 4, 2007	$	1,446
2007		1,600
2008		1,600
2009		1,600
2010		1,600
2011		154

Note 2: Summary of significant accounting policies

Basis of presentation—Dave & Buster's is a operator of large format, high-volume regional entertainment complexes. The Company's one industry segment is the ownership and operation of 47 restaurant/entertainment complexes (a "Complex" or "Store") under the names "Dave & Buster's," "Dave & Buster's Grand Sports Café" and "Jillian's," which are principally located in the United States

and Canada. The consolidated financial statements include the accounts of Dave & Buster's and all wholly-owned subsidiaries. All material intercompany accounts and transactions have been eliminated in consolidation. See Note 1.

Our fiscal year ends on the Sunday after the Saturday closest to January 31. All references to the first quarter of 2006 relate to the combined 54 day period ended April 30, 2006 of the Successor and the 37 day period ended March 7, 2006 of the Predecessor. All references to the first quarter of 2005 relate to the thirteen week period ended May 1, 2005. All references to 2006 relate to the combined 53 week period ended February 4, 2007 and all references to 2005 relate to the 52 weeks ended January 29, 2006.

Our quarterly financial data should be read in conjunction with our consolidated financial statements for the year ended January 29, 2006. The results of operations for the periods ended March 7, 2006 and April 30, 2006, are not necessarily indicative of the results that may be achieved for the entire 53 week fiscal year, which ends on February 4, 2007.

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.

Cash and cash equivalents—We consider amounts receivable from credit card companies and all highly liquid temporary investments with original maturities of three months or less to be cash equivalents.

Inventories—Food and beverage and amusements inventories are reported at the lower of cost or market determined on a first-in, first-out method. Amusements inventory includes electronic equipment, stuffed animals and small novelty items used as redemption prizes for certain midway games, as well, as supplies needed for midway operations. Prior to the Merger, smallware supplies inventories, consisting of china, glassware and kitchen utensils, were capitalized at the store opening date, or when the smallware inventory increased due to changes in our menu, and were reviewed periodically for valuation. Smallware replacements are expensed as incurred. The Successor will record smallwares as fixed assets and amortize smallwares over an estimated useful life of 7 years. Accordingly, smallwares inventory was reclassified to property and equipment for the fiscal year ended January 29, 2006 for consistency in presentation. Inventories consist of the following:

	April 30, 2006 Successor	January 29, 2006 Predecessor
Food and beverage	$ 2,601	$ 2,460
Amusements	5,670	5,668
Other	5,467	4,341
	$ 13,738	$ 12,469

Property and equipment—Property and equipment are recorded at cost. Expenditures that substantially increase the useful lives of the property and equipment are capitalized, whereas costs incurred to maintain the appearance and functionality of such assets are charged to repair and

maintenance expense. Interest costs and rent (through October 30, 2005) incurred during construction are capitalized and depreciated based on the estimated useful life of the underlying asset. Interest costs capitalized during the construction of facilities for the thirteen weeks ended April 30, 2006 and May 1, 2005 were $109 and $15, respectively. As disclosed under "Recent Accounting Pronouncements" below, beginning October 31, 2005, we no longer capitalize such rental costs. Rent costs capitalized during the construction period of facilities in the first quarter of 2005 were $45.

Property and equipment, excluding most games, are depreciated using the straight-line method over the estimated useful life of the assets. Games are generally depreciated on the 150 percent declining-balance method over the estimated useful life of the assets. Reviews are performed regularly to determine whether facts or circumstances exist that indicate the carrying values of our property and equipment are impaired. We assess the recoverability of our property and equipment by comparing the projected future undiscounted net cash flows associated with these assets to their respective carrying amounts. Impairment, if any, is based on the excess of the carrying amount over the estimated fair market value of the assets.

Accrued liabilities

Accrued liabilities consist of the following:

	April 30, 2006 Successor	January 29, 2006 Predecessor
Compensation and benefits	$ 7,851	$ 5,708
Redemption liability	4,639	624
Sales and use taxes	2,423	2,462
Real estate taxes	2,318	1,796
Transaction costs	3,853	—
Interest	3,689	1,324
Other	9,190	9,380
Total accrued liabilities	$ 33,963	$ 21,294

Income taxes—We use 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-based compensation—In December 2004, the FASB issued SFAS No. 123R, "Share-Based Payments," SFAS No. 123R is a revision of SFAS No. 123, "Accounting for Stock Based Compensation," and supersedes APB 25. Among other items, SFAS 123R eliminates the use of APB 25 and the intrinsic value method of accounting, and requires companies to recognize in the financial statements the cost of employee services received in exchange for awards of equity instruments, based on the fair value of those awards on the grant date. The effective date of SFAS 123R is the first reporting period beginning after June 15, 2005. We adopted SFAS No. 123R as of the beginning of our first quarter of 2006 using the modified prospective method, which required us to record stock compensation for all unvested and new awards as of the adoption date. Accordingly, we have not

restated prior period amounts presented herein. We recorded non-cash charges for stock compensation of approximately $25 in the period from January 30, 2006 to March 7, 2006. The impact of SFAS 123R on our results of operations for the period after the Merger cannot be predicted at this time, because no additional options have been issued or are currently planned to be issued.

SFAS 123, as amended by SFAS 148, "Accounting for Stock-Based Compensation—Transaction and Disclosure—an Amendment of FASB Statement 123" changed the method for recognition of the cost of stock option and award plans. Adoption of the cost recognition requirements under SFAS 123 was optional; however, the following supplemental information is provided (in thousands):

	Thirteen weeks ended May 1, 2005 Predecessor
Net income, as reported	$ 4,561
Stock compensation expenses recorded under the intrinsic method, net of income taxes	113
Pro forma stock compensation expense recorded under the fair value method, net of income taxes	(153)
Pro forma net income	$ 4,521

Foreign currency translation—The financial statements related to our operations of our Toronto complex are prepared in Canadian dollars. Income statement amounts are translated at average exchange rates for each period, while the assets and liabilities are translated at year-end exchange rates. Translation adjustments are included in stockholders' equity as a component of comprehensive income.

Revenue recognition—Food and beverage revenues are recorded at point of service. Amusement revenues consist primarily of deposits on power cards used by customers to activate most of our midway games. These deposits are generally recognized at the time of sale rather than when utilized, as the estimated amount of unused deposits which will be used for future game activations has historically not been material to our financial position or results of operations.

Foreign license revenues are deferred until the Company fulfills its obligations under license agreements. The license agreements provide for continuing royalty fees based on a percentage of gross revenues, which are recognized when realization is assured. Revenue from international licensees for the first quarter of 2006 and 2005 were $77 and $252, respectively.

Amusements costs of products—Certain of our midway games allow customers to earn coupons which may be redeemed for prizes, including electronic equipment, sports memorabilia, stuffed animals, clothing and small novelty items. The cost of these prizes is included in the cost of amusement products.

Startup costs—Startup costs include costs associated with the opening and organizing of new complexes or conversion of existing complexes, including the cost of feasibility studies, staff-training and recruiting and travel costs for employees engaged in such startup activities. All startup costs are expensed as incurred.

Lease accounting—Rent is computed on a straight line basis over the lease term. The lease term for newly constructed locations commences on the date when the Company takes possession and has the right to control the use of the leased premises. The lease term includes the initial non-cancelable lease term plus any periods covered by renewal options that the Company considers reasonably assured of exercising. Our lease obligations were adjusted to their estimated fair values (Note 1).

Comprehensive income—Comprehensive income is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. In addition to net income (loss), unrealized foreign currency translation gain (loss) is included in comprehensive income. Unrealized translation gains for the thirteen week periods ended April 30, 2006 and May 1, 2005 were $146 and $30, respectively.

Recent accounting pronouncements—In October 2005, the Financial Accounting Standards Board (FASB) issued a FASB Staff Position (FSP), FAS 13-1, "Accounting for Rental Costs Incurred during a Construction Period." The FSP addresses accounting for rental costs associated with building and ground operating leases that are incurred during a construction period. The Board concluded that such costs incurred during a construction period should be recognized as rental expense. The provisions of this FSP must be applied to the first reporting period beginning after December 15, 2005. Early adoption was permitted. Accordingly, effective October 31, 2005, we no longer capitalize rent incurred during the construction period. The impact of this new standard on our future financial statements will be dependent on the number of complexes opened each period and the terms of the related lease agreements.

Note 3: Long-term debt

Long-term debt consisted of the following (in thousands):

	April 30, 2006 Successor	January 29, 2006 Predecessor
Senior Credit Facility—revolving	$ 12,414	$ 5,439
Senior Credit Facility—term	50,000	—
Senior notes	175,000	—
Term debt facility	—	45,375
Convertible subordinated notes, net of discount	—	29,361
	237,414	80,175
Less current installments	500	9,625
Long-term debt, less current installments	$ 236,914	$ 70,550

In connection with the Merger, we terminated our existing credit facility and entered into a new senior secured credit facility that (a) provides a $100,000 term loan facility (with up to $50,000 of the term loan facility available on a delayed-draw basis for a period of six months) with a maturity of seven years from the closing date of the Merger and (b) provides a $60,000 revolving credit facility with a maturity of five years from the closing date of the Merger. The $60,000 revolving credit facility will include (i) a $20,000 letter of credit sub-facility, (ii) a $5,000 swingline sub-facility and (iii) a $5,000 (in US Dollar equivalent) sub facility available in Canadian dollars to the Canadian subsidiary. The

revolving credit facility will be used to provide financing for working capital and general corporate purposes. As of April 30, 2006, borrowings under the revolving credit facility were $12,414, we drew approximately $50,000 under the term loan facility and had $6,200 in letters of credit outstanding.

The interest rates per annum applicable to loans, other than swingline loans, under our new senior secured credit facility are, at our option, equal to either a base rate (or, in the case of the Canadian revolving credit facility, a Canadian prime rate) or a Eurodollar rate (or, in the case of the Canadian revolving credit facility, a Canadian cost of funds rate) for one-, two-, three- or six-month (or, in the case of the Canadian revolving credit facility, 30, 60, 90 or 180-day) interest periods chosen by us, in each case, plus an applicable margin percentage. Swingline loans bear interest at the base rate plus the applicable margin. The weighted average rate of interest on our senior credit facility was 7.3% at April 30, 2006.

Effective June 30, 2006, we entered into two interest rate swap agreements that expire in 2011, to change a portion of our variable rate debt to fixed rate debt. Pursuant to the swap agreements, the interest rate on notional amounts aggregating $47,000 at June 30, 2006 is fixed at 5.31 percent. The agreements provide for an increase in the notional amounts to $94,600 and retention of the 5.31 percent fixed rate at September 30, 2006. The notional amounts decline ratably over the term of the agreements. The agreements have not been designated as hedges and, accordingly, future adjustments required to mark the instruments to their fair value will be recorded as interest expense.

Our new senior secured credit facility requires that we comply with the following financial covenants: a minimum fixed charge coverage ratio test and a maximum leverage ratio test. We will initially be required to maintain a minimum fixed charge coverage ratio of 1.00:1.00 and a maximum leverage ratio of 4.75:1.00 as of April 30, 2006. The financial covenants will become more restrictive over time. The required minimum fixed charge coverage ratio increases annually to a required ratio of 1.20:1.00 in the fourth quarter of fiscal year 2009 and thereafter. The maximum leverage ratio decreases annually to a required ratio of 3.50:1.00 in the fourth quarter of fiscal year 2010 and thereafter. In addition, our new senior secured credit facility includes negative covenants restricting or limiting our, WS Midway Holdings, Inc.'s and our subsidiaries' ability to, among other things incur additional indebtedness, make capital expenditures and sell or acquire assets.

Our new senior secured credit facility also contains certain customary representations and warranties, affirmative covenants and events of default, including payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults and cross-acceleration to certain indebtedness, certain events of bankruptcy, certain events under ERISA, material judgments, actual or asserted failures of any guarantee or security document supporting our new senior secured credit facility to be in full force and effect and a change of control. If an event of default occurs, the lenders under our new senior secured credit facility would be entitled to take various actions, including acceleration of amounts due under our new senior secured credit facility and all actions permitted to be taken by a secured creditor.

In connection with the Merger on March 8, 2006, we closed a placement of $175,000 aggregate principal amount of senior notes. The notes are general unsecured, unsubordinated obligations of the Company and mature on March 15, 2014. Interest on the notes compounds semi-annually and accrues at the rate of 11.25% per annum. On our after March 15, 2010, we may redeem all or, from time to

time, a part of the senior notes upon not less than 30 nor more than 60 days notice, at redemption prices (expressed as a percentage of principal amount) plus accrued and unpaid interest on the senior notes. Prior to March 15, 2010, we may on any one or more occasions redeem up to 35% of the original principal amount of the notes using the proceeds of certain equity offerings completed before March 15, 2010.

Our new senior notes restrict our ability to incur indebtedness, outside of our new senior credit facility, unless our consolidated coverage ratio exceeds 2.00:1.00 or other financial and operational requirements are met. Additionally, the terms of the notes restrict our ability to make certain payments to affiliated entities.

The following table sets forth the Company's future debt payment obligations as of April 30, 2006:

	Debt outstanding at April 30, 2006
1 year or less	$ 500
2 years	500
3 years	500
4 years	500
5 years	500
Thereafter	234,914
Total future payments	237,414

We recorded interest expense of $5,893 and $1,537 in the first quarter of 2006 and 2005, respectively. Interest costs capitalized during the construction of facilities for the first quarter of 2006 and 2005 were $109 and $15.

Note 4: Commitments and 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.

The following table sets forth our operating lease commitments as of April 30, 2006:

	1 Year or less	2 Years	3 Years	4 Years	5 Years	Thereafter	Total
Operating leases	$ 40,101	$ 40,331	$ 40,068	$ 40,411	$ 40,130	$ 355,290	$ 556,331

Note 5: Income Taxes

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

	April 30, 2006 Successor	January 29, 2006 Predecessor
Deferred tax liabilities:		
Trademark/Tradename	$ (24,387)	$ —
Fixed asset basis differences	(13,302)	(17,468)
Other, net	(498)	(648)
Deferred tax liability	(38,187)	(18,116)
Deferred tax assets:		
Leasing transactions	$ —	$ 6,051
Worker's compensation	1,305	831
Amusement redemption liability	1,525	—
Other	1,064	54
Deferred tax asset	3,894	6,936
Net deferred tax liability	$ (34,293)	$ (11,180)

The Company recognized an income tax benefit of approximately $1,200 for the period from March 8, 2006 through April 30, 2006.

Note 6: Condensed Consolidating Financial Information

In connection with the Merger, we closed the placement of $175,000 aggregate principle amount senior notes as described in Note 3. The notes are guaranteed on a senior basis by all of our domestic subsidiaries. The subsidiary guarantees of the notes are full and unconditional and joint and several. Each of the subsidiary guarantors are 100 percent owned by Dave and Buster's.

The accompanying condensed consolidating financial information has been prepared and presented pursuant to SEC Regulation S-X Rule 3-10 "Financial statements of guarantors and issuers of guaranteed securities registered or being registered." This information is not necessarily intended to present the financial position, results of operations and cash flows of the individual companies or groups of companies in accordance with accounting principles generally accepted in the United States of America.

April 30, 2006 (Successor):

	Issuer and Subsidiary Guarantors	Subsidiary Non-Guarantors	Consolidating Adjustments	Dave & Buster's, Inc.
	(In thousands, except share amounts)			
Assets				
Current assets:				
Cash and cash equivalents	$ 13,976	$ 1,347	$ —	$ 15,323
Inventories	13,496	242	—	13,738
Prepaid expenses	3,286	21	—	3,307
Deferred income taxes	3,894	—	—	3,894
Other current assets	7,929	4	(3,277)	4,656
Total current assets	42,581	1,614	(3,277)	40,918
Property and equipment, net	338,814	6,371	—	345,185
Tradename	63,000	—	—	63,000
Goodwill	67,557	—	—	67,557
Investment in Sub	2,497	—	(2,497)	—
Other assets and deferred charges	26,131	103	—	26,234
Total assets	$ 540,580	$ 8,088	$ (5,774)	$ 542,894

Liabilities and stockholders' equity				
Current liabilities:				
Current installments of long-term debt (Note 4)	$ 500	$ —	$ —	$ 500
Accounts payable	18,688	3,779	(3,277)	19,190
Accrued liabilities	33,574	389	—	33,963
Income taxes payable	1,241	1	—	1,242
Deferred income taxes	—	—	—	—
Total current liabilities	54,003	4,169	(3,277)	54,895
Deferred income taxes	38,187	—	—	38,187
Deferred rent liability	49,284	8	—	49,292
Other liabilities	5,652	—	—	5,652
Payable to dissenting shareholders	51,733	—	—	51,733
Long-term debt, less current installments (Note 4)	235,500	1,414	—	236,914
Commitments and contingencies (Note 5)				
Stockholders' equity (Note 1):				
Common stock, $0.01 par value, 1,000 authorized; 100 issued and outstanding as of April 30, 2006	—	—	—	—
Preferred stock, 10,000,000 authorized; none issued	—	—	—	—
Restricted stock awards	—	—	—	—
Paid-in capital	108,100	2,465	(2,465)	108,100
Accumulated comprehensive income	149	—	—	149
Retained earnings (deficit)	(2,028)	32	(32)	(2,028)
Total stockholders' equity	106,221	2,497	(2,497)	106,221
Total liabilities and stockholders' equity	$ 540,580	$ 8,088	$ (5,774)	$ 542,894

54 Day Period from March 8, 2006 to April 30, 2006 (Successor):

	Issuer and Subsidiary Guarantors	Subsidiary Non-Guarantors	Consolidating Adjustments	Dave & Buster's Inc.
		(In thousands)		
Food and beverage revenues	$ 40,702	$ 800	$ —	$ 41,502
Amusement and other revenues	34,108	824	—	34,932
Total revenues	74,810	1,624	—	76,434
Cost of food and beverage	10,486	269	—	10,755
Cost of amusement and other	4,525	134	—	4,659
Total cost of products	15,011	403	—	15,414
Operating payroll and benefits	21,571	457	—	22,028
Other store operating expenses	23,010	563	—	23,573
General and administrative expenses	5,272	—	—	5,272
Depreciation and amortization expense	6,609	132	—	6,741
Startup costs	1,406	—	—	1,406
Total operating costs	72,879	1,555	—	74,434
Operating income	1,931	69	—	2,000
Interest expense, net	5,231	13	—	5,244
Income (loss) before provision for income taxes	(3,300)	56	—	(3,244)
Provision (benefit) for income taxes	(1,240)	24	—	(1,216)
Net income (loss)	$ (2,060)	$ 32	$ —	$ (2,028)

37 Day Period from January 30, 2006 to March 7, 2006 (Predecessor):

	Issuer and Subsidiary Guarantors	Subsidiary Non-Guarantors	Consolidating Adjustments	Dave & Buster's Inc.
	(In thousands)			
Food and beverage revenues	$ 27,106	$ 456	$ —	$ 27,562
Amusement and other revenues	22,427	420	—	22,847
Total revenues	49,533	876	—	50,409
Cost of food and beverage	6,958	153	—	7,111
Cost of amusement and other	3,105	78	—	3,183
Total cost of products	10,063	231	—	10,294
Operating payroll and benefits	14,044	249	—	14,293
Other store operating expenses	15,273	304	—	15,577
General and administrative expenses	3,480	—	—	3,480
Depreciation and amortization expense	4,268	60	—	4,328
Startup costs	880	—	—	880
Total operating costs	48,008	844	—	48,852
Operating income	1,525	32	—	1,557
Interest expense, net	644	5	—	649
Income (loss) before provision for income taxes	881	27	—	908
Provision (benefit) for income taxes	418	4	—	422
Net income (loss)	$ 463	$ 23	$ —	$ 486

Thirteen week period ended May 1, 2005 (Predecessor):

	Issuer and Subsidiary Guarantors	Subsidiary Non-Guarantors	Consolidating Adjustments	Dave & Buster's Inc.
		(In thousands)		
Food and beverage revenues	$ 60,253	$ 1,139	$ —	$ 61,392
Amusement and other revenues	53,212	1,131	—	54,343
Total revenues	113,465	2,270	—	115,735
Cost of food and beverage	15,656	372	—	16,028
Cost of amusement and other	6,340	137	—	6,477
Total cost of products	21,996	509	—	22,505
Operating payroll and benefits	32,074	701	—	32,775
Other store operating expenses	33,302	686	—	33,988
General and administrative expenses	7,692	—	—	7,692
Depreciation and amortization expense	9,602	139	—	9,741
Startup costs	78	—	—	78
Total operating costs	104,744	2,035	—	106,779
Operating income	8,721	235	—	8,956
Interest expense, net	1,726	47	—	1,773
Income (loss) before provision for income taxes	6,995	188	—	7,183
Provision (benefit) for income taxes	2,551	71	—	2,622
Net income (loss)	$ 4,444	$ 117	$ —	$ 4,561

54 Day Period from March 8, 2006 to April 30, 2006 (Successor):

	Issuer and Subsidiary Guarantors	Subsidiary Non-Guarantors	Consolidating Adjustments	Dave & Buster's Inc.
		(In thousands)		
Cash flows from operating activities:				
Net income (loss)	$ (2,060)	$ 32	$ —	$ (2,028)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:				
Depreciation and amortization expense	6,609	132	—	6,741
Deferred income tax expense (benefit)				
Tax benefit related to stock options	—	—	—	—
Restricted stock awards	—	—	—	—
Stock-based compensation charges	—	—	—	—
Warrants related to convertible debt	—	—	—	—
Other, net	60	115	—	175
Changes in operating assets and liabilities, net of effect of business acquisitions				
Inventories	(1,185)	(12)	—	(1,197)
Prepaid expenses	(185)	32	—	(153)
Other current assets	(485)	24	—	(461)
Other assets and deferred charges	1,387	(1)	—	1,386
Accounts payable	1,757	83	—	1,840
Accrued liabilities	1,567	234	—	1,801
Income taxes payable	(2,960)	29	—	(2,931)
Deferred rent liability	59	8	—	67
Other liabilities	(51)	—	—	(51)
Net cash provided by operating activities	4,513	676	—	5,189
Cash flows from investing activities:				
Capital expenditures	(5,741)	(214)	—	(5,955)
Merger with WS Midway Acquisition Sub, Inc.	(274,711)	—	—	(274,711)
Proceeds from sales of property and equipment	77	—	—	77
Net cash used in investing activities	(280,375)	(214)	—	(280,589)
Cash flows from financing activities:				
Borrowings under revolving credit facility	11,000	1,414	—	12,414
Repayments of long-term debt	(49,723)	(1,414)	—	(51,137)
Borrowings under senior secured credit facility	50,000	—	—	50,000
Borrowings under senior notes	175,000	—	—	175,000
Initial investment by WS Midway Acquisition Sub, Inc. and affiliates	108,100	—	—	108,100
Debt issuance costs	(11,466)	—	—	(11,466)
Proceeds from exercises of stock options	—	—	—	—
Net cash provided by (used in) financing activities	282,911	—	—	282,911
Increase (decrease) in cash and cash equivalents	7,049	462	—	7,511
Beginning cash and cash equivalents	6,927	885	—	7,812
Ending cash and cash equivalents	$ 13,976	$ 1,347	$ —	$ 15,323

37 Day Period from January 30, 2006 to March 7, 2006 (Predecessor):

	Issuer and Subsidiary Guarantors	Subsidiary Non-Guarantors	Consolidating Adjustments	Dave & Buster's Inc.
		(In thousands)		
Cash flows from operating activities:				
Net income (loss)	$ 463	$ 23	$ —	$ 486
Adjustments to reconcile net income (loss) to net cash provided by operating activities:				
Depreciation and amortization expense	4,268	60	—	4,328
Deferred income tax expense (benefit)	(1,088)	—	—	(1,088)
Tax benefit related to stock options	10	—	—	10
Restricted stock awards	61	—	—	61
Stock-based compensation charges	25	—	—	25
Warrants related to convertible debt	21	—	—	21
Other, net	(1)	8	—	7
Changes in operating assets and liabilities, net of effect of business acquisitions				
Inventories	(70)	(2)	—	(72)
Prepaid expenses	(239)	70	—	(169)
Other current assets	(63)	62	—	(1)
Other assets and deferred charges	(66)	—	—	(66)
Accounts payable	(3,883)	(33)	—	(3,916)
Accrued liabilities	6,926	(8)	—	6,918
Income taxes payable	1,500	4	—	1,504
Deferred rent liability	2,496	6	—	2,502
Other liabilities	191	—	—	191
Net cash provided by operating activities	10,551	190	—	10,741
Cash flows from investing activities:				
Capital expenditures	(10,577)	(23)	—	(10,600)
Merger with WS Midway Acquisition Sub, Inc.	—	—	—	—
Proceeds from sales of property and equipment	—	—	—	—
Net cash used in investing activities	(10,577)	(23)	—	(10,600)
Cash flows from financing activities:				
Borrowings under revolving credit facility	6,000	—	—	6,000
Repayments of long-term debt	(6,439)	—	—	(6,439)
Borrowings under senior secured credit facility	—	—	—	—
Borrowings under senior notes	—	—	—	—
Initial investment by WS Midway Acquisition Sub, Inc. and affiliates	—	—	—	—
Debt issuance costs	—	—	—	—
Proceeds from exercises of stock options	528	—	—	528
Net cash provided by (used in) financing activities	89	—	—	89
Increase (decrease) in cash and cash equivalents	63	167	—	230
Beginning cash and cash equivalents	6,864	718	—	7,582
Ending cash and cash equivalents	$ 6,927	$ 885	$ —	$ 7,812

UNTIL , 2006, ALL DEALERS THAT EFFECT TRANSACTIONS IN THESE SECURITIES, WHETHER OR NOT PARTICIPATING IN THIS OFFERING, MAY BE REQUIRED TO DELIVER A PROSPECTUS. THIS IS IN addition TO THE DEALERS' OBLIGATION TO DELIVER A PROSPECTUS WHEN ACTING AS UNDERWRITERS AND WITH RESPECT TO THEIR UNSOLD ALLOTMENTS OR SUBSCRIPTIONS.

Offer to Exchange

$175,000,000 Aggregate Principal Amount of
$11^{1}/_{4}$% Senior Notes due 2014
that have been registered under
the Securities Act of 1933
for Outstanding $11^{1}/_{4}$% Senior Notes due 2014

DAVE & BUSTER'S, INC.

PROSPECTUS

Dated , 2006

PART II:

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 20. Indemnification of Directors and Officers

Generally, under Missouri law, a corporation may indemnify a director or officer against expenses (including attorneys' fees), judgments, fines and settlement payments actually and reasonably incurred in connection with an action, suit or proceeding (other than by or in the right of the corporation) to which he is made a party by virtue of his service to the corporation, provided that he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, he had no reasonable cause to believe his conduct was unlawful. With respect to an action or suit by or in the right of a corporation, the corporation may generally indemnify a director or officer against expenses and settlement payments actually and reasonably incurred if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, except that indemnification is not permitted, unless a court otherwise determines it proper, to the extent such person is found liable for negligence or misconduct. Missouri law further states that a corporation shall indemnify a director or officer against expenses actually and reasonably incurred in any of the above actions, suits, or proceedings to the extent such person is successful on the merits or otherwise in defense of the same.

Missouri law generally grants a corporation the power to adopt broad indemnification provisions with respect to its directors and officers, but it places certain restrictions on a corporation's ability to indemnify its officers and directors against conduct which is finally adjudged to have been knowingly fraudulent or deliberately dishonest or to have involved willful misconduct.

Article Seven of the registrant's Articles of Incorporation eliminates, to the fullest extent permissible under the corporation laws of the State of Missouri, the liability of directors of the registrant and the stockholders for monetary damages for breach of fiduciary duty as a director. Such provisions further provide that indemnification of directors and officers shall be provided to the fullest extent permitted under Missouri law.

An insurance policy obtained by the registrant provides for indemnification of officers and directors of the registrant and certain other persons against liabilities and expenses incurred by any of them in certain stated proceedings and under certain stated conditions.

Item 21. Exhibits and Financial Statement Schedules

(a) *Exhibits*.

The following is a complete list of Exhibits filed as part of the Registration Statement:

Exhibit Number	Description
2.1	Plan of Merger
3.1	Amended and Restated Certificate of Incorporation of Dave & Buster's, Inc.
3.2	Amended and Restated By-Laws of Dave & Buster's, Inc.
4.1	Indenture dated as of March 8, 2006 among Dave & Buster's, Inc., the Guarantors as defined therein and The Bank of New York Trust Company, N.A., as Trustee.
4.2	Registration Rights Agreement dated as of March 8, 2006 among Dave & Buster's, Inc. the guarantors listed in Schedule I thereto and Initial Purchaser named therein.
4.3	Form of $11^{1}/_{4}$% Senior Notes due 2014, (included in Exhibit 4.1).

4.4	Purchase Agreement dated as of March 3, 2006, among WS Midway Acquisition Sub, Inc. and the Initial Purchaser named therein.
5.1	Opinion of Hallett & Perrin
10.1	Credit Agreement dated as of March 8, 2006, by and among WS Midway Holdings, Inc., Dave & Buster's, Inc., as Borrower, 6131646 CANADA INC., as Canadian Borrower, the Several Lenders from Time to Time Parties Thereto, WELLS FARGO BANK, N.A. and CIT ENDING SERVICES CORPORATION, as Co-Documentation Agents, BANK OF AMERICA, N.A., as Syndication Agent, and JPMORGAN CHASE BANK, N.A., as Administrative Agent.
10.2	Form of Employment and Executive Retention Agreements for Messrs. Corriveau and Corley, dated April 3, 2000.
10.3	Form of Executive Retention Agreement for executive officers other than Messrs. Corriveau and Corley
10.4	Asset Purchase Agreement, dated September 24, 2004, by and among Tango Acquisition, Inc, Dave & Buster's Inc., JBC Acquisition Corporation, Gemini Investors III, L.P. Jillian's Entertainment Holdings, Inc. and various subsidiaries of Jillian's Entertainment Holdings, Inc.
12.1	Statement Regarding Computation of Ratio of Earnings to Fixed Charges
21.1	Subsidiaries of Dave & Buster's, Inc.
23.1	Consent of Ernst & Young LLP.
23.2	Consent of Hallett & Perrin (included as part of Exhibit 5.1).
24.1	Power of attorney of Dave & Buster's, Inc. (included in signature pages hereto).
25.1	Form T-1 Statement of Eligibility of The Bank of New York Trust Company, N.A. to act as Trustee under the Indenture.
99.1	Form of Letter of Transmittal.
99.2	Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
99.3	Form of Notice of Guaranteed Delivery.
99.4	Form of Letter to Clients.

Item 22. Undertakings

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end

of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11, or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

The undersigned registrant hereby undertakes to supply by means of post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Dallas, State of Texas, on this 24th day of July, 2006.

DAVE & BUSTER'S, INC.

By: /s/ JAMES W. CORLEY

Name: **James W. Corley**
Title: *Chief Executive Officer*

Each of the undersigned, being a director or officer of Dave & Buster's, Inc., a Missouri corporation, hereby constitutes and appoints Jay L. Tobin his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and any registration statement related to the offering contemplated by this registration statement that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, and to file the same, with all exhibits thereto and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done to the end that such registration statement or registration statements shall comply with the Securities Act of 1933, as amended, and the applicable rules and regulations adopted or issued pursuant thereto, as fully and to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them or their substitute or resubstitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ JAMES W. CORLEY **James W. Corley**	Chief Executive Officer (Principal Executive Officer) and Director	July 24, 2006
/s/ DAVID O. CORRIVEAU **David O. Corriveau**	President and Director	July 24, 2006
/s/ STEPHEN M. KING **Stephen M. King**	Senior Vice President and Chief Financial Officer (Principal Financial Officer)	July 24, 2006
/s/ MICHAEL J. METZINGER **Michael J. Metzinger**	Vice President—Accounting and Controller (Principal Accounting Officer)	July 24, 2006

/s/ GREG S. FELDMAN **Greg S. Feldman**	Director	July 24, 2006
/s/ JASON B. FORTIN **Jason B. Fortin**	Director	July 24, 2006
/s/ CARL M. STANTON **Carl M. Stanton**	Director	July 24, 2006

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Dallas, State of Texas, on this 24th day of July, 2006.

D&B Realty Holding, Inc.
DANB Texas, Inc.
Dave & Buster's I, L.P.
Dave & Buster's Management Corporation, Inc.
Dave & Buster's of Georgia, Inc.
Dave & Buster's of Illinois, Inc.
Dave & Buster's of Kansas, Inc.
Dave & Buster's of Maryland, Inc.
Dave & Buster's of Nebraska, Inc.
Dave & Buster's of New York, Inc.
Dave & Buster's of Pennsylvania, Inc.
Dave & Buster's of Pittsburgh, Inc.
Tango Acquisition, Inc.
Tango License Corporation
Tango of Arizona, Inc.
Tango of Farmingdale, Inc.
Tango of Franklin, Inc.
Tango of Houston, Inc.
Tango of Minnesota, Inc.
Tango of North Carolina, Inc.
Tango of Sugarloaf, Inc.
Tango of Tennessee, Inc.
Tango of Westbury, Inc.

By: /s/ DAVID O. CORRIVEAU

Name: **David O. Corriveau**
Title: *President*

Each of the undersigned, being a director or officer of Dave & Buster's, Inc., a Missouri corporation, hereby constitutes and appoints Jay L. Tobin his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and any registration statement related to the offering contemplated by this registration statement that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, and to file the same, with all exhibits thereto and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done to the end that such registration statement or registration statements shall comply with the Securities Act of 1933, as amended, and the applicable rules and regulations adopted or issued pursuant thereto, as fully and to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them or their substitute or resubstitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ JAMES W. CORLEY **James W. Corley**	Director	July 24, 2006
/s/ DAVID O. CORRIVEAU **David O. Corriveau**	President (Principal Executive Officer) and Director	July 24, 2006
/s/ STEPHEN M. KING **Stephen M. King**	Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	July 24, 2006

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Dallas, State of Texas, on this 24th day of July, 2006.

D&B Leasing, Inc.
Dave & Buster's of Colorado, Inc.
Dave & Buster's of Florida, Inc.
Dave & Buster's of Hawaii, Inc.

By: /s/ DAVID O. CORRIVEAU

Name: **David O. Corriveau**
Title: *President*

Each of the undersigned, being a director or officer of Dave & Buster's, Inc., a Missouri corporation, hereby constitutes and appoints Jay L. Tobin his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and any registration statement related to the offering contemplated by this registration statement that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, and to file the same, with all exhibits thereto and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done to the end that such registration statement or registration statements shall comply with the Securities Act of 1933, as amended, and the applicable rules and regulations adopted or issued pursuant thereto, as fully and to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them or their substitute or resubstitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ DAVID O. CORRIVEAU **David O. Corriveau**	President (Principal Executive Officer) and Director	July 24, 2006
/s/ STEPHEN M. KING **Stephen M. King**	Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	July 24, 2006

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Dallas, State of Texas, on this 24th day of July, 2006.

Dave & Buster's of California, Inc.

By: /s/ DAVID O. CORRIVEAU

Name: **David O. Corriveau**
Title: *President*

Each of the undersigned, being a director or officer of Dave & Buster's, Inc., a Missouri corporation, hereby constitutes and appoints Jay L. Tobin his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and any registration statement related to the offering contemplated by this registration statement that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, and to file the same, with all exhibits thereto and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done to the end that such registration statement or registration statements shall comply with the Securities Act of 1933, as amended, and the applicable rules and regulations adopted or issued pursuant thereto, as fully and to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them or their substitute or resubstitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ DAVID O. CORRIVEAU **David O. Corriveau**	President (Principal Executive Officer) and Director	July 24, 2006
/s/ STEPHEN M. KING **Stephen M. King**	Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	July 24, 2006
/s/ JAMES W. CORLEY **James W. Corley**	Director	July 24, 2006
Darin Bybee	Director	July 24, 2006

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Dallas, State of Texas, on this 24th day of July, 2006.

Tango of Arundel, Inc.

By: /s/ DAVID O. CORRIVEAU

Name: **David O. Corriveau**
Title: *President*

Each of the undersigned, being a director or officer of Dave & Buster's, Inc., a Missouri corporation, hereby constitutes and appoints Jay L. Tobin his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and any registration statement related to the offering contemplated by this registration statement that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, and to file the same, with all exhibits thereto and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done to the end that such registration statement or registration statements shall comply with the Securities Act of 1933, as amended, and the applicable rules and regulations adopted or issued pursuant thereto, as fully and to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them or their substitute or resubstitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ DAVID O. CORRIVEAU **David O. Corriveau**	President (Principal Executive Officer) and Director	July 24, 2006
/s/ JAY L. TOBIN **Jay L. Tobin**	Vice President and Treasurer (Principal Financial and Accounting Officer)	July 24, 2006
/s/ JAMES W. CORLEY **James W. Corley**	Director	July 24, 2006

EXHIBIT INDEX

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4.2	Registration Rights Agreement dated as of March 8, 2006 among Dave & Buster's, Inc. the guarantors listed in Schedule I thereto and Initial Purchaser named therein.
4.3	Form of 11 1/4% Senior Notes due 2014, (included in Exhibit 4.1).
4.4	Purchase Agreement dated as of March 3, 2006, among WS Midway Acquisition Sub, Inc. and the Initial Purchaser named therein.
5.1	Opinion of Hallett & Perrin
10.1	Credit Agreement dated as of March 8, 2006, by and among WS Midway Holdings, Inc., Dave & Buster's, Inc., as Borrower, 6131646 CANADA INC., as Canadian Borrower, the Several Lenders from Time to Time Parties Thereto, WELLS FARGO BANK, N.A. and CIT LENDING SERVICES CORPORATION, as Co-Documentation Agents, BANK OF AMERICA, N.A., as Syndication Agent, and JPMORGAN CHASE BANK, N.A., as Administrative Agent.
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23.2	Consent of Hallett & Perrin (included as part of Exhibit 5.1).
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99.1	Form of Letter of Transmittal.
99.2	Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
99.3	Form of Notice of Guaranteed Delivery.
99.4	Form of Letter to Clients.

Exhibit 2.1

SUMMARY ARTICLES OF MERGER

Pursuant to Section 351.430 of The General and Business Corporation Law of the State of Missouri, the undersigned, Dave & Buster's, Inc., a Missouri corporation, hereby adopts the following Articles of Merger:

1. The names of the constituent corporations and the states under the laws of which they are respectively organized are as follows:

Name of Corporation	State of Incorporation
Dave & Buster's, Inc.	Missouri
WS Midway Acquisition Sub, Inc.	Missouri

2. An Agreement and Plan of Merger, dated as of December 8, 2005 (the "Plan of Merger"), has been approved and authorized by each of the constituent corporations in accordance with Sections 351.420 and 351.425 of The General and Business Corporation Law of the State of Missouri.

3. The effective date of the merger is the date these Articles of Merger are filed with the Secretary of State of the State of Missouri.

4. The name of the surviving corporation is Dave & Buster's, Inc.

5. The Articles of Incorporation of the surviving corporation have been amended according to the terms of the Plan of Merger and are set forth on the attached *Exhibit A*.

6. The executed Plan of Merger is on file at the principal place of business of the surviving corporation at 2481 Manana Drive, Dallas, Texas 75220.

7. A copy of the Plan of Merger will be furnished by the surviving corporation, on request and without cost, to any shareholder of any entity that is a party to the Plan of Merger.

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In Affirmation thereof, the facts stated above are true and correct. (The undersigned understands that false statements made in this filing are subject to the penalties provided under Section 575.040, RSMo)

DAVE & BUSTER'S, INC.
a Missouri corporation

By: _____

Name: James W. Corley
Title: Chief Executive Officer

Exhibit A

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

DAVE & BUSTER'S, INC.,

WS MIDWAY ACQUISITION SUB, INC.

AND

WS MIDWAY HOLDINGS, INC.

DATED AS OF DECEMBER 8, 2005

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ARTICLE VIII

GENERAL PROVISIONS

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of December 8, 2005 (the "Agreement"), by and among DAVE & BUSTER'S, INC., a Missouri corporation (the "Company"), WS MIDWAY ACQUISITION SUB, INC., a Missouri corporation ("Merger Sub"), and WS MIDWAY HOLDINGS, INC., a Delaware corporation ("Holdings").

W I T N E S S E T H:

WHEREAS, the Board of Directors of the Company (the "Board of Directors") and the board of directors of Merger Sub have each determined that it is in the best interests of their respective shareholders for Merger Sub to merge with and into the Company (the "Merger") in accordance with the General and Business Corporation Law of the State of Missouri (the "Missouri BCL") and upon the terms and subject to the conditions set forth herein;

WHEREAS, the Board of Directors and the board of directors of Merger Sub have approved the Merger;

WHEREAS, Merger Sub is a wholly-owned subsidiary of Holdings;

WHEREAS, as a condition for Holdings and Merger Sub to enter into this Agreement, those shareholders of the Company listed on the signature pages to the Voting Agreement (as defined below) (the "Voting Group") have entered into the Voting Agreement, dated as of the date hereof, with Holdings and the other parties thereto (the "Voting Agreement"), which agreement provides, among other things, that, subject to the terms and conditions thereof, each member of the Group will vote its shares of Company Common Stock (as defined below) in favor of the Merger and the approval and adoption of this Agreement;

WHEREAS, Merger Sub, Holdings and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger; and

WHEREAS, terms used but not defined herein shall have the meanings set forth in *Section 8.4*, unless otherwise noted.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the parties hereby agree as follows:

ARTICLE I

THE MERGER

SECTION 1.1. *The Merger.* At the Effective Time and subject to and upon the terms and conditions of this Agreement and the Missouri BCL, Merger Sub shall be merged with and into the Company, the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation. The Company as the surviving corporation after the Merger hereinafter sometimes is referred to as the "Surviving Corporation."

SECTION 1.2. *Effective Time.* As promptly as practicable, and in any event within one business day after the satisfaction or waiver of the conditions set forth in Article VI, the parties hereto shall cause the Merger to be consummated by filing Articles of Merger with the Secretary of State of the State of Missouri, in such form as required by, and executed in accordance with the relevant provisions of, the Missouri BCL (the time of such filing being the "Effective Time").

SECTION 1.3. *Effect of the Merger.* At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of the Missouri BCL. Without limiting the generality of the

foregoing, and subject thereto, at the Effective Time all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

SECTION 1.4. *Subsequent Actions.* If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of either of the Company or Merger Sub acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of either the Company or Merger Sub, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of each of such corporations or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise to carry out this Agreement.

SECTION 1.5. *Articles of Incorporation; By-Laws; Directors and Officers.*

(a) At the Effective Time the Articles of Incorporation of Merger Sub, as in effect immediately prior to the Effective Time, shall be the Articles of Incorporation of the Surviving Corporation until thereafter amended in accordance with the provisions thereof and the Missouri BCL, except that such Articles of Incorporation shall be amended to provide that the name of the Surviving Corporation shall be "Dave & Buster's, Inc".

(b) The By-Laws of Merger Sub, as in effect immediately before the Effective Time, shall be the By-Laws of the Surviving Corporation until thereafter altered, amended or repealed as provided therein or in the Articles of Incorporation of the Surviving Corporation and the Missouri BCL, except that such By-Laws shall be amended to change the name of the Surviving Corporation to "Dave & Buster's, Inc.".

(c) The directors of Merger Sub immediately before the Effective Time will be the initial directors of the Surviving Corporation, and the officers of the Company immediately before the Effective Time will be the initial officers of the Surviving Corporation, in each case until their successors are duly elected or appointed and qualified in the manner provided in the Surviving Corporation's Articles of Incorporation and By-Laws, or as otherwise provided by applicable law.

SECTION 1.6. *Conversion of Securities.* At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, the Company or the holder of any shares of common stock, par value $0.01 per share, of the Company (the "Company Common Stock"), or any shares of common stock, par value $0.01 per share, of Merger Sub (the "Merger Sub Common Stock"):

(a) (i) *Company Common Stock.* Each share of Company Common Stock that is issued and outstanding immediately prior to the Effective Time (other than shares to be cancelled in accordance with *Section 1.6(c)* and Dissenting Shares) shall be converted into, and become exchangeable for, the right to receive from the Surviving Corporation an amount in cash equal to $18.05 per share of Company Common Stock, without interest (the "Merger Consideration"). As of the Effective Time, all shares of Company Common Stock upon which the Merger Consideration is payable pursuant to this *Section 1.6(a)(i)* shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate representing any such shares of Company Common Stock shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration.

(ii) *Warrants.* Each warrant to purchase Company Common Stock ("Warrants") that is issued and outstanding immediately prior to the Effective Time shall be converted into, and become exchangeable for, the right to receive from the Surviving Corporation a warrant (a "New Warrant") entitling the holder thereof to receive, upon exercise thereof and payment of the exercise price, an amount (the "Warrant Consideration") in cash equal to the product of (A) the Merger Consideration and (B) the number of shares of Company Common Stock into which such Warrant was exercisable immediately prior to the Effective Time, without interest. As of the Effective Time, all Warrants converted into New Warrants pursuant to this *Section 1.6(a)(ii)* shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate representing a Warrant shall cease to have any rights with respect thereto, except the right to receive a New Warrant.

(b) *Merger Sub Common Stock.* Each share of Merger Sub Common Stock that is issued and outstanding immediately prior to the Effective Time shall be converted into and become one fully paid and nonassessable share of common stock, $0.01 par value per share, of the Surviving Corporation, and the Surviving Corporation shall be a wholly-owned subsidiary of Holdings.

(c) *Cancellation of Treasury Stock and Holdings and Merger Sub-Owned Company Common Stock.* All shares of Company Common Stock that are owned by the Company or any direct or indirect Subsidiary of the Company and any shares of Company Common Stock owned by Holdings, Merger Sub or any subsidiary of Holdings or Merger Sub or held in the treasury of the Company shall, by virtue of the Merger and without any action on the part of the holder thereof, be cancelled and retired and shall cease to exist, and no cash, Company Common Stock or other consideration shall be delivered or deliverable in exchange therefor.

(d) *Dissenting Shares*. Notwithstanding anything in this Agreement to the contrary, shares of Company Common Stock that are issued and outstanding immediately prior to the Effective Time and that are held by a holder who has validly demanded payment of the fair value for such holder's shares as determined in accordance with Section 351.455 of the Missouri BCL ("Dissenting Shares") shall not be converted into or be exchangeable for the right to receive the Merger Consideration (but instead shall be converted into the right to receive payment from the Surviving Corporation with respect to such Dissenting Shares in accordance with the Missouri BCL), unless and until such holder shall have failed to perfect or shall have effectively withdrawn or lost such holder's right under the Missouri BCL. If any such holder of Company Common Stock shall have failed to perfect or shall have effectively withdrawn or lost such right, each share of such holder shall be treated, at the Company's sole discretion, as a share of Company Common Stock that had been converted as of the Effective Time into the right to receive the Merger Consideration in accordance with *Section 1.6(a)(i)*. Any payments made in respect of Dissenting Shares shall be made by the Surviving Corporation. The Company shall give prompt notice to Holdings and Merger Sub of any demands received by the Company for appraisal of shares of Company Common Stock and of attempted withdrawals of such notice and any other instruments provided pursuant to applicable law, and Holdings and Merger Sub shall have the right to participate in and direct all negotiations and proceedings with respect to such demands. The Company shall not, except with the prior written consent of Holdings and Merger Sub, make any payment with respect to, or settle or offer to settle, any such demands or approve any withdrawal of any such demands.

SECTION 1.7. *Exchange of Certificates and Warrants*.

(a) *Exchange Agent*. From time to time after the Effective Time, the Surviving Corporation shall, when and as required, deposit with a bank or trust company designated by Holdings (the "Exchange Agent"), for the benefit of the holders of shares of Company Common Stock and Warrants, for exchange in accordance with this Article I through the Exchange Agent, an amount

equal to the aggregate Merger Consideration and the aggregate Warrant Consideration (such consideration being hereinafter referred to as the "Exchange Fund"). The Exchange Agent shall, pursuant to irrevocable instructions of the Surviving Corporation, make payments of the Merger Consideration and the Warrant Consideration out of the Exchange Fund. The Exchange Fund shall not be used for any other purpose.

(b) *Exchange Procedure for Certificates*. As soon as reasonably practicable after the Effective Time, the Surviving Corporation shall cause the Exchange Agent to mail to each holder of record of a certificate or certificates which immediately prior to the Effective Time represented outstanding shares of Company Common Stock (the "Certificates") whose shares of Company Common Stock were converted into the right to receive the Merger Consideration pursuant to *Section 1.6(a)(i)*: (x) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent and shall be in such form and have such other customary provisions as the Surviving Corporation may reasonably specify); and (y) instructions for use in effecting the surrender of the Certificates in exchange for the Merger Consideration. Upon surrender of a Certificate for cancellation to the Exchange Agent or to such other agent or agents as may be appointed by the Surviving Corporation, together with such letter of transmittal, duly executed, and such other documents as may reasonably be required by the Exchange Agent, the holder of such Certificate shall be entitled to receive in exchange therefor the Merger Consideration into which the shares of Company Common Stock theretofore represented by such Certificate shall have been converted pursuant to *Section 1.6(a)(i)*, and the Certificate so surrendered shall forthwith be cancelled. The Exchange Agent shall accept such Certificates upon compliance with such reasonable terms and conditions as the Exchange Agent may impose to effect an orderly exchange thereof in accordance with normal exchange practices. In the event of a transfer of ownership of such Company Common Stock which is not registered in the transfer records of the Company, payment may be made to a Person other than the Person in whose name the Certificate so surrendered is registered, if such Certificate shall be properly endorsed or otherwise be in proper form for transfer and the Person requesting such payment shall pay any transfer or other Taxes required by reason of the payment to a Person other than the registered holder of such Certificate or establish to the satisfaction of the Surviving Corporation that such Tax has been paid or is not applicable. Until surrendered as contemplated by this *Section 1.7(b)*, each Certificate (other than a Certificate representing shares of Company Common Stock cancelled in accordance with *Section 1.6(c)* and other than Dissenting Shares) shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the Merger Consideration, without interest, into which the shares of Company Common Stock theretofore represented by such Certificate shall have been converted pursuant to *Section 1.6(a)(i)*. No interest will be paid or will accrue on the consideration payable upon the surrender of any Certificate.

(c) *Exchange Procedure for Warrants*. As soon as reasonably practicable after the Effective Time, the Surviving Corporation shall cause the Exchange Agent to mail to each holder of record of a Warrant whose Warrant is converted into the right to receive a New Warrant pursuant to *Section 1.6(a)(ii)*: (x) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Warrants shall pass, only upon delivery of the Warrants to the Exchange Agent and shall be in such form and have such other customary provisions as the Surviving Corporation may reasonably specify); and (y) instructions for use in effecting the surrender of the Warrants in exchange for the New Warrants. Upon surrender of a Warrant for cancellation to the Exchange Agent or to such other agent or agents as may be appointed by the Surviving Corporation, together with such letter of transmittal, duly executed, and such other documents as may reasonably be required by the Exchange Agent, the holder of such Warrant shall be entitled to receive in exchange therefor the New Warrant into which such Warrant shall have been converted pursuant to *Section 1.6(a)(ii)*, and the Warrant so surrendered shall forthwith be

cancelled. The Exchange Agent shall accept such Warrants upon compliance with such reasonable terms and conditions as the Exchange Agent may impose to effect an orderly exchange thereof in accordance with normal exchange practices. In the event of a transfer of ownership of such Warrant which is not registered in the transfer records of the Company, issuance of a New Warrant may be made to a Person other than the Person in whose name the Warrant so surrendered is registered, if such Warrant shall be properly endorsed or otherwise be in proper form for transfer and the Person requesting such New Warrant shall pay any transfer or other Taxes required by reason of the issuance of a New Warrant to a Person other than the registered holder of such Warrant or establish to the satisfaction of the Surviving Corporation that such Tax has been paid or is not applicable. Until surrendered as contemplated by this *Section 1.7(c)*, each Warrant shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the New Warrant into which the Warrant shall have been converted pursuant to *Section 1.6(a)(ii)*.

(d) *No Further Ownership Rights in Company Common Stock or Warrants*. All consideration paid upon the surrender of Certificates in accordance with the terms of this Article I shall be deemed to have been paid in full satisfaction of all rights pertaining to the shares of Company Common Stock theretofore represented by such Certificates, subject, however, to any obligation of the Surviving Corporation to pay any dividends or make any other distributions with a record date prior to the Effective Time which may have been authorized or made with respect to shares of Company Common Stock which remain unpaid or unsatisfied at the Effective Time, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of Company Common Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, the Certificates or Warrants are presented to the Surviving Corporation or the Exchange Agent for any reason, they shall be cancelled and exchanged as provided in this *Article I*, except as otherwise provided by applicable law.

(e) *Termination of the Exchange Fund*. Any portion of the Exchange Fund which remains undistributed to the holders of the Certificates for six months after the Effective Time shall be delivered to the Surviving Corporation and any holders of the Certificates who have not theretofore complied with this *Article I* shall thereafter look only to the Surviving Corporation and only as general creditors thereof for payment of their claim for the Merger Consideration and, if applicable, any unpaid dividends or other distributions which such holder may be due on Company Common Stock, under applicable law.

(f) *No Liability*. None of the Company, Merger Sub, Holdings, the Surviving Corporation or the Exchange Agent, or any employee, officer, director, stockholder, agent or affiliate thereof, shall be liable to any Person in respect of any cash delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

(i) For purposes of this Agreement, "affiliate" of a Person means a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned Person.

(ii) For purposes of this Agreement, "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of stock, as trustee or executor, by contract, credit arrangement or otherwise.

(g) *Investment of the Exchange Fund*. The Exchange Agent shall invest any cash included in the Exchange Fund, as directed by the Surviving Corporation, on a daily basis. Any interest and other income resulting from such investments shall be paid to the Surviving Corporation. To the extent that there are losses with respect to such investments, or the Exchange Fund diminishes for other reasons below the level required to make prompt payments of the Merger Consideration as

contemplated hereby, the Surviving Corporation shall promptly replace or restore the portion of the Exchange Fund lost through investments or other events so as to ensure that the Exchange Fund is, at all times, maintained at a level sufficient to make such payments.

(h) *Withholding Rights*. The Surviving Corporation shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of shares of Company Common Stock such amounts as the Surviving Corporation is required to deduct and withhold with respect to the making of such payment under the Internal Revenue Code of 1986, as amended (the "Code"), or any provision of state, local or foreign tax law. To the extent that amounts are so deducted and withheld by the Surviving Corporation, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the shares of Company Common Stock in respect of which such deduction and withholding was made by the Surviving Corporation.

(i) *Lost Certificates*. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by the Surviving Corporation, the posting by such Person of a bond in such reasonable amount as the Surviving Corporation may require as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the Merger Consideration payable in respect thereof pursuant to this Agreement.

SECTION 1.8. *Stock Plans.*

(a) Not later than the Effective Time, the Company shall take all actions necessary to provide that, at the Effective Time, each then outstanding option to purchase shares of Company Common Stock (the "Options") granted under any of the Company's stock option plans listed in *Section 3.3* of the Company Disclosure Schedule, each as amended (collectively, the "Option Plans") or granted otherwise, whether or not then exercisable or vested, shall be cancelled in exchange for the right to receive from Merger Sub or the Surviving Corporation an amount in cash in respect thereof equal to the product of (i) the excess, if any, of the Merger Consideration over the exercise price thereof and (ii) the number of shares of Company Common Stock subject thereto (such payment to be net of applicable withholding Taxes).

(b) Except as provided herein or as otherwise agreed to by the parties and to the extent permitted by the Option Plans, (i) the Company shall cause the Option Plans to terminate as of the Effective Time and cause the provisions in any other plan, program or arrangement providing for the issuance or grant by the Company of any interest in respect of the capital stock of the Company or any of its Subsidiaries to terminate and have no further force or effect as of the Effective Time and (ii) the Company shall ensure that following the Effective Time no holder of Options or any participant in the Option Plans or anyone other than Holdings shall hold or have any right to acquire any equity securities of the Company, the Surviving Corporation or any Subsidiary thereof.

SECTION 1.9. *Time and Place of Closing.* Unless otherwise mutually agreed upon in writing by Holdings and the Company, the closing of the Merger (the "Closing") will be held at 10:00 a.m., New York City time, on the first business day following the date that all of the conditions precedent specified in Article VI (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions) have been satisfied or waived by the party or parties permitted to do so (such date being referred to hereinafter as the "Closing Date"). The place of Closing shall be at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, New York, 10036-6522, or at such other place as may be agreed between Holdings and the Company.

ARTICLE II

REPRESENTATIONS AND WARRANTIES
OF MERGER SUB AND HOLDINGS

Except as set forth in the Disclosure Schedule delivered by Holdings and Merger Sub to the Company at or prior to the execution and delivery of this Agreement, after giving effect to *Section 8.15* (the "Holdings Schedule"), each of Merger Sub and Holdings hereby represents and warrants to the Company as follows:

SECTION 2.1. *Organization.* Each of Merger Sub and Holdings is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has the requisite corporate power and authority to own, operate or lease the properties that it purports to own, operate or lease and to carry on its business as it is now being conducted.

SECTION 2.2. *Capitalization.* The authorized capital stock of Merger Sub consists of 1,000 shares of Merger Sub Common Stock. As of the date hereof, 100 of such shares are issued and outstanding, duly authorized, validly issued, fully paid and nonassessable and owned beneficially and of record by Holdings free and clear of any liens, security interests, pledges, agreements, claims, charges or encumbrances of any nature whatsoever ("Liens"). There are no options, warrants or other rights, agreements, arrangements or commitments of any character obligating Merger Sub to issue or sell any shares of capital stock of or other equity interests in Merger Sub.

SECTION 2.3. *Authority.* Each of Merger Sub and Holdings has the necessary corporate power and authority to enter into this Agreement and carry out their respective obligations hereunder. The execution and delivery of this Agreement by each of Merger Sub and Holdings and the consummation by each of Merger Sub and Holdings of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of each of Merger Sub and Holdings and no other corporate proceeding is necessary for the execution and delivery of this Agreement by either Merger Sub or Holdings, the performance by each of Merger Sub and Holdings of their respective obligations hereunder and the consummation by each of Merger Sub and Holdings of the transactions contemplated hereby. This Agreement has been duly executed and delivered by each of Merger Sub and Holdings and constitutes a legal, valid and binding obligation of each of Merger Sub and Holdings, enforceable against each of Merger Sub and Holdings in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, relating to creditors' rights generally and (ii) equitable remedies of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

SECTION 2.4. *No Conflict; Required Filings and Consents.*

(a) The execution and delivery of this Agreement by each of Merger Sub and Holdings does not, and the performance of this Agreement by each of Merger Sub and Holdings and the consummation of the transactions contemplated hereby will not, (i) subject to the requirements, filings, consents and approvals referred to in *Section 2.4(b)*, conflict with or violate any law, regulation, court order, judgment or decree applicable to Merger Sub or Holdings or by which their respective property is bound or subject, (ii) violate or conflict with the Articles of Incorporation or By-Laws of Merger Sub or the Certificate of Incorporation or By-Laws of Holdings or (iii) subject to the requirements, filings, consents and approvals referred to in *Section 2.4(b)*, result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination or cancellation of, or result in the creation of a Lien on any of the property or assets of Merger Sub or Holdings pursuant to, any contract, agreement, indenture, lease or other instrument of any kind, permit, license or franchise to which Merger Sub or Holdings is a party or by which either Merger

Sub or Holdings or any of their respective property is bound or subject except, in the case of clause (iii), for such breaches, defaults, rights, or Liens which would not materially impair the ability of Holdings or Merger Sub to consummate the transactions contemplated hereby.

(b) Except for applicable requirements, if any, of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Securities Act of 1933, as amended (the "Securities Act"), the pre-merger notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and the filing and recordation of appropriate Articles of Merger as required by the Missouri BCL, and except as set forth in *Section 2.4(b)* of the Holdings Schedule, neither Holdings nor Merger Sub is required to submit any notice, report or other filing with any Governmental Entity in connection with the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby, except for such of the foregoing, including under Regulatory Laws, as are required by reason of the legal or regulatory status or the activities of the Company or its Subsidiaries or by reason of facts specifically pertaining to any of them. No waiver, consent, approval or authorization of any Governmental Entity is required to be obtained or made by Holdings or Merger Sub in connection with their execution, delivery or performance of this Agreement, except for such of the foregoing as are required by reason of the legal or regulatory status or the activities of the Company or its Subsidiaries or by reason of facts specifically pertaining to any of them. For purposes of this Agreement, "Regulatory Laws" means any Federal, state, county, municipal, local or foreign statute, ordinance, rule, regulation, permit, consent, waiver, notice, approval, registration, finding of suitability, license, judgment, order, decree, injunction or other authorization applicable to, governing or relating to the legal or regulatory status or the activities of the Company or its Subsidiaries, including, without limitation, with respect to alcoholic beverage control, amusement, health and safety and fire safety.

SECTION 2.5. *Financing Arrangements.* Merger Sub has delivered to the Company financing letters with respect to debt financing (the "Debt Financing") of $275 million and an equity commitment letter from Wellspring Capital Management LLC ("Wellspring") addressed to the Company with respect to equity financing of $108 million (the "Equity Financing" and, together with the Debt Financing, the "Financing") in an aggregate amount sufficient (a) to pay (or provide the funds for the Surviving Corporation to pay) the aggregate Merger Consideration and aggregate Warrant Consideration, (b) to pay (or provide the funds for the Surviving Corporation to pay) all amounts contemplated by *Section 1.8* when due, (c) to refinance any indebtedness or other obligation of the Company which may become due as a result of this Agreement or any of the transactions contemplated hereby, and (d) to pay all related fees and expenses, arising solely out of the Merger when due. As of the date of this Agreement, the Debt Financing (as set forth in the financing letters) consists of (i) $100 million in term loans provided by banks and (ii) $175 million of senior unsecured debt securities. The foregoing financing letters, as in effect on the date of this Agreement and without giving effect to any amendments or supplements thereto after the date hereof, are hereinafter referred to as the "Commitment Letters."

SECTION 2.6. *No Prior Activities.* Except for obligations or liabilities incurred in connection with its incorporation or organization or the negotiation and consummation of this Agreement and the transactions contemplated hereby (including the Financing), neither Holdings nor Merger Sub has incurred any obligations or liabilities, other than in connection with their formation, and has not engaged in any business or activities of any type or kind whatsoever.

SECTION 2.7. *Brokers.* Except for the Persons set forth on *Section 2.7* of the Holdings Schedule, and the parties providing the Financing, and except for arrangements post-Closing, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by and on behalf of Merger Sub or Holdings.

SECTION 2.8. *Information Supplied.* None of the information to be supplied in writing by Merger Sub or Holdings specifically for inclusion in the proxy statement contemplated by *Section 5.1* (together with any amendments and supplements thereto, the "Proxy Statement") will, on the date it is filed and on the date it is first published, sent or given to the holders of Company Common Stock and at the time of the meeting of the Company's shareholders to consider the Merger Agreement (the "Company Shareholders' Meeting"), contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. If, at any time prior to the Company Shareholders' Meeting, any event with respect to either Merger Sub or Holdings, or with respect to information supplied in writing by either Merger Sub or Holdings specifically for inclusion in the Proxy Statement, shall occur which is required to be described in an amendment of, or supplement to, such Proxy Statement, such event shall be so described by either Merger Sub or Holdings, as applicable, and provided to the Company. All documents that Merger Sub or Holdings is responsible for filing with the SEC in connection with the transactions contemplated herein will comply as to form, in all material respects, with the provisions of the Exchange Act and the rules and regulations thereunder, and each such document required to be filed with any federal, state, provincial, local and foreign government, governmental, quasi-governmental, supranational, regulatory or administrative authority, agency, commission or any court, tribunal, or judicial or arbitral body (each, a "Governmental Entity") will comply in all material respects with the provisions of applicable law as to the information required to be contained therein. Notwithstanding the foregoing, neither Merger Sub nor Holdings makes any representation or warranty with respect to the information supplied or to be supplied by or on behalf of the Company for inclusion or incorporation by reference in the Proxy Statement.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the Disclosure Schedule delivered by the Company to Holdings and Merger Sub at or prior to the execution and delivery of this Agreement, after giving effect to *Section 8.15* (the "Company Disclosure Schedule"), the Company hereby represents and warrants on behalf of itself and its Subsidiaries to Merger Sub and Holdings as follows:

SECTION 3.1. *Organization and Qualification.* Each of the Company and its Subsidiaries is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has the requisite corporate power and authority necessary to own, possess, license, operate or lease the properties that it purports to own, possess, license, operate or lease and to carry on its business as it is now being conducted. Each of the Company and its Subsidiaries is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where its business or the character of its properties owned, possessed, licensed, operated or leased, or the nature of its activities, makes such qualification necessary, except for such failure which, when taken together with all other such failures, would not reasonably be expected to result in a Material Adverse Effect. For purposes of this Agreement, "Material Adverse Effect" means any effect, change, fact, event, occurrence, development or circumstance that, individually or together with any other effect, change, fact, event, occurrence, development or circumstance, (A) is or could reasonably be expected to result in a material adverse effect on or change in the condition (financial or otherwise), properties, business, prospects, operations, results of operations, assets or liabilities of the Company and all of its Subsidiaries, taken as a whole, or (B) could reasonably be expected to prohibit, restrict or materially impede or curtail the consummation of the transactions contemplated by this Agreement, including the Merger; *provided*, *however*, that to the extent any effect, change, fact, event, occurrence, development or circumstance is caused by or results from any of the following, it shall not be taken into account in determining whether there has been a "Material Adverse Effect": (i) changes in U.S.

economic conditions, or (ii) general changes or developments in the restaurant industry in which the Company and its Subsidiaries operate unless, in the case of the foregoing clauses (i) and (ii), such changes or developments referred to therein would reasonably be expected to have a materially disproportionate impact on the condition (financial or otherwise), properties, business, operations, results of operations, prospects, assets or liabilities of the Company and its Subsidiaries taken as a whole relative to other industry participants. The Company has delivered to Holdings and Merger Sub complete and correct copies of its Restated Articles of Incorporation and Amended and Restated By-Laws and comparable charter and organizational documents for each of its Subsidiaries.

SECTION 3.2. *Subsidiaries and Joint Ventures.*

(a) Each Subsidiary of the Company is identified on *Section 3.2(a)* of the Company Disclosure Schedule. All the outstanding equity interests of each Subsidiary of the Company are owned by the Company, by another wholly-owned Subsidiary of the Company or by the Company and another wholly-owned Subsidiary of the Company, free and clear of all Liens, except as set forth on *Section 3.2(a)* of the Company Disclosure Schedule. All of the capital stock or other equity interests of each Subsidiary of the Company has been duly authorized and is validly issued, fully paid and nonassessable and free and clear from any Liens and preemptive or other similar rights. There are no proxies or voting agreements with respect to any shares of capital stock of any such Subsidiary. There are no options, puts, calls, warrants or other rights, agreements, arrangements, restrictions or commitments of any character obligating the Company or any of its Subsidiaries to issue, sell, redeem, repurchase or exchange any shares of capital stock of or other equity interests in any of the Company's Subsidiaries or any securities convertible into or exchangeable for any capital stock or other equity interests, or any debt securities of any of the Company's Subsidiaries or to provide funds to or make any investment (in the form of a loan, capital contribution or otherwise) in the Company or any of its Subsidiaries or any other Person. The Company does not directly or indirectly own a greater than 1.0% equity interest in any Person that is not a Subsidiary of the Company, other than Tango of Sugarloaf, Inc., a Delaware corporation ("Tango"), organized solely for the purpose of purchasing a 50.1% general partner interest (the "Sugarloaf Interest") in Sugarloaf Gwinnett Entertainment Company, L.P., a Delaware limited partnership ("Sugarloaf"). Except as set forth in *Section 3.2(a)* of the Company Disclosure Schedule, Tango has no assets or liabilities other than the Sugarloaf Interest and has no debts, obligations or liabilities, under the limited partnership agreement of Sugarloaf or otherwise, to fund any capital calls or make any other investments in, or loans or other payments to or on behalf of, Sugarloaf. For purposes of this Agreement, "Subsidiary" means, with respect to any Person, (a) any corporation with respect to which such Person, directly or indirectly, through one or more Subsidiaries, (i) owns more than 50% of the outstanding shares of capital stock having generally the right to vote in the election of directors or (ii) has the power, under ordinary circumstances, to elect, or to direct the election of, a majority of the board of directors of such corporation, (b) any partnership, other than Sugarloaf, with respect to which (i) such Person or a Subsidiary of such Person is a general partner, (ii) such Person and its Subsidiaries together own more than 50% of the interests therein or (iii) such Person and its Subsidiaries have the right to appoint or elect or direct the appointment or election of a majority of the directors or other Person or body responsible for the governance or management thereof, (c) any limited liability company with respect to which (i) such Person or a Subsidiary of such Person is the manager or managing member, (ii) such Person and its Subsidiaries together own more than 50% of the interests therein or (iii) such Person and its Subsidiaries have the right to appoint or elect or direct the appointment or election of a majority of the directors or other Person or body responsible for the governance or management thereof or (d) any other entity in which such Person has, and/or one or more of its Subsidiaries have, directly or indirectly, (i) at least a 50% ownership interest or (ii) the power to appoint or elect or direct the appointment or election of a majority of the directors or other Person or body responsible for the governance or management thereof.

(b) Neither the Company nor any Subsidiary of the Company is a party to or member of, or otherwise holds, any Joint Venture. With respect to the joint ventures of the Company and the Subsidiaries of the Company that are not Joint Ventures (i) except as set forth on *Section 3.2(b)* of the Company Disclosure Schedule, neither the Company nor any Subsidiary of the Company is liable for any material obligations or material liabilities of any such joint ventures, (ii) except as set forth on *Section 3.2(b)* of the Company Disclosure Schedule, neither the Company nor any Subsidiary of the Company is obligated to make any loans or capital contributions to, or to undertake any guarantees or obligations with respect to, such joint ventures, (iii) none of such joint ventures own or hold any assets that are material to the continued conduct of the business of the Company and the Subsidiaries of the Company, taken as a whole, substantially as it is presently conducted, (iv) except as set forth on *Section 3.2(b)* of the Company Disclosure Schedule, neither the Company nor any Subsidiary of the Company is subject to any material limitation on its right to compete or any material limitation on its right to otherwise conduct business by reason of any agreement relating to such joint venture and (v) to the knowledge of the Company, each joint venture is in material compliance with all applicable laws. As used herein, "Joint Venture" shall mean those direct or indirect joint ventures of the Company or any Subsidiary of the Company (i) that are not otherwise a direct or indirect Subsidiary of the Company and (ii) in which the Company or any Subsidiary of the Company as of the date of this Agreement have invested, or made commitments to invest, $10 million or more, but "Joint Venture" and "joint venture" shall not include any entities whose securities are held solely for passive investment purposes by the Company or any Subsidiary of the Company. *Section 3.2(b)* of the Company Disclosure Schedule contains, as of the date of this Agreement, a correct and complete list of each joint venture of the Company or any Subsidiary of the Company that is not a Joint Venture.

SECTION 3.3. *Capitalization.* The authorized capital stock of the Company consists of (i) 50,000,000 shares of Company Common Stock and (ii) 10,000,000 shares of preferred stock, par value $0.01 per share ("Company Preferred Stock"). As of the date of this Agreement: (A) 13,700,250 shares of Company Common Stock were issued and outstanding, all of which shares are duly authorized, validly issued, fully paid, and nonassessable and free and clear from any preemptive or other similar rights; (B) no shares of Company Preferred Stock were issued or outstanding; (C) 2,257,916 shares of Company Common Stock were reserved for issuance upon exercise of outstanding Options under the Option Plans at a weighted average exercise price of $13.3728 per share; (D) 574,691 shares of Company Common Stock were reserved for issuance upon exercise of outstanding Warrants; (E) 2,321,981 shares of Company Common Stock were reserved for issuance upon conversion of outstanding 5.0% Convertible Subordinated Notes Due 2008 (the "Notes"); (F) 592,250 restricted shares of Company Common Stock ("Restricted Stock") were issued and outstanding under the Option Plans; and (G) all Options and Restricted Stock were granted under the Option Plans and not under any other plan, program or agreement (other than any individual award agreements made pursuant to the Option Plans and forms of which have been made available to Holdings). The shares of Company Common Stock issuable pursuant to the Option Plans, upon exercise of the Warrants and upon conversion of the Notes have been duly reserved for issuance by the Company, and upon any issuance of such shares in accordance with the terms of the Option Plans, Warrants or Notes, as the case may be, such shares will be duly authorized, validly issued, fully paid and nonassessable and free and clear from any preemptive or other similar rights. All outstanding shares of Company Common Stock are, and all shares which may be issued prior to the Effective Time will be when issued, duly authorized, validly issued, fully paid and nonassessable and free and clear from any preemptive or other similar rights. Except as disclosed in *Section 3.3* of the Company Disclosure Schedule, there are (i) no other options, puts, calls, warrants or other rights, agreements, arrangements, restrictions, or commitments of any character obligating the Company or any of its Subsidiaries to issue, sell, redeem, repurchase or exchange any shares of capital stock of or other equity interests in the Company or any securities convertible into or exchangeable for any capital stock or other equity interests, or any debt securities of

the Company and (ii) no bonds, debentures, notes or other indebtedness having the right to vote on any matters on which shareholders of the Company may vote (whether or not dependent on conversion or other trigger event). Except as disclosed in this *Section 3.3* or in *Section 3.3* of the Company Disclosure Schedule, there are no existing registration covenants with respect to Company Common Stock or any other securities of the Company and its Subsidiaries. The Company has provided to Holdings and Merger Sub a correct and complete list of each Option, including the holder, date of grant, exercise price and number of shares of Company Common Stock subject thereto. To the knowledge of the Company, after due inquiry, no shareholder is a party to or holds shares of Company Common Stock bound by or subject to any voting agreement, voting trust, proxy or similar arrangement, except for the Voting Agreement.

SECTION 3.4. *Authority*.

The Company has the necessary corporate power and authority to enter into this Agreement and, subject to obtaining any necessary shareholder approval of the Merger, to carry out its obligations hereunder. The execution and delivery of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been (i) duly authorized and adopted by the unanimous vote of the Board of Directors, (ii) determined to be fair to, advisable and in the best interests of the shareholders of the Company by the Board of Directors and (iii) duly authorized by all necessary corporate action on the part of the Company, subject to the approval of the Merger by the Company's shareholders in accordance with the Missouri BCL. This Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, relating to creditors' rights generally and (ii) equitable remedies of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

SECTION 3.5. *No Conflict; Required Filings and Consents*.

(a) Except as set forth in *Section 3.5(a)* of the Company Disclosure Schedule, the execution and delivery of this Agreement by the Company do not, and the performance of this Agreement by the Company and the consummation of the transactions contemplated hereby (including completion of the Financing on the terms set forth in the Commitment Letters) will not, (i) conflict with or violate any law, regulation, court order, judgment or decree or Regulatory Laws applicable to the Company or any of its Subsidiaries or by which each of their respective properties are bound or subject, (ii) violate or conflict with the Restated Articles of Incorporation or Amended and Restated By-Laws of the Company or the comparable charter documents or organizational documents of any of its Subsidiaries, (iii) result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or terminate or cancel or give to others any rights of termination, acceleration or cancellation of (with or without notice or lapse of time or both), or result in the creation of a Lien on any of the properties or assets of the Company or any of its Subsidiaries pursuant to, any of the terms, conditions or provisions of any contract, agreement, indenture, note, bond, mortgage, deed of trust, agreement, Employee Plan, lease or other instrument or obligation of any kind, permit, license, certificate or franchise to which the Company or any of its Subsidiaries is a party, of which the Company or any of its Subsidiaries is the beneficiary or by which the Company or any of its Subsidiaries or any of their respective property is bound or subject, except, with respect to clause (iii), for breaches, defaults, terminations, cancellations or rights of termination, acceleration or cancellation which, in the aggregate, and assuming the exercise of any rights of termination, acceleration or cancellation, would not reasonably be expected to result in a Material Adverse Effect or (iv) violate any valid and enforceable judgment, ruling, order, writ, injunction, decree, or any statute, rule or regulation applicable to the Company or any of its Subsidiaries or by which any of their respective property is bound or subject.

(b) Except for applicable requirements of the Exchange Act, the pre-merger notification requirements of the HSR Act and the expiration or termination of any applicable waiting period thereunder, and filing and recordation of appropriate Articles of Merger or other documents as required by the Missouri BCL, and except as set forth in *Section 3.5(b)* of the Company Disclosure Schedule, the Company and its Subsidiaries are not required to prepare or submit any application, notice, report or other filing with, or obtain any consent, authorization, approval, registration or confirmation from, any Governmental Entity or third party in connection with the execution, delivery or performance of this Agreement by the Company and the consummation of the transactions contemplated hereby.

SECTION 3.6. *SEC Filings; Financial Statements.*

(a) The Company has timely filed all forms, reports, documents, proxy statements and exhibits required to be filed with the SEC since January 31, 2002 (collectively, the "SEC Reports"). Except as set forth in *Section 3.6* of the Company Disclosure Schedule, the SEC Reports (i) were prepared in accordance with the requirements of the Securities Act or the Exchange Act, as the case may be, as in effect at the time they were filed and (ii) did not at the time they were filed and do not, as amended and supplemented, if applicable, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Company has delivered to Merger Sub copies of all SEC Reports, other than those available on the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system of the SEC. None of the Company's Subsidiaries is required to file any form, report, proxy statement or other document with the SEC.

(b) Except as set forth in *Section 3.6* of the Company Disclosure Schedule, the consolidated financial statements contained in the SEC Reports complied, as of their respective dates of filing with the SEC, and the SEC Reports filed with the SEC after the date of this Agreement will comply as of their respective dates of filing with the SEC, in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been, and the SEC Reports filed after the date of this Agreement will be, prepared in accordance with GAAP (except, in the case of unaudited consolidated quarterly statements, as permitted by Form 10-Q under the Exchange Act and except as may be indicated in the notes thereto) and fairly present, and the financial statements contained in the SEC Reports filed after the date of this Agreement will fairly present, the consolidated financial position of the Company and its Subsidiaries as of the respective dates thereof and the consolidated statements of operations and cash flows of the Company for the periods indicated, except in the case of unaudited quarterly financial statements that were or are subject to normal and recurring non-material year-end adjustments. There is no investigation or inquiry pending, or to the knowledge of the Company, threatened against the Company or any of its Subsidiaries by any Governmental Entity in connection with revenue recognition practices, restructuring charges, amortization, writeoffs or any other accounting matter, whether or not a restatement of financial statements is required.

(c) Except for those liabilities and obligations that are reflected or reserved against on the balance sheet contained in the Company's Annual Report on Form 10-K for the year ended January 30, 2005 (the "Company 2004 Form 10-K") or in the footnotes to such balance sheet, neither the Company nor any of its Subsidiaries has any material liabilities or obligations of any nature whatsoever (whether accrued, absolute, contingent, known, unknown or otherwise), except for liabilities or obligations incurred since January 30, 2005 in the ordinary course of business consistent with past practice.

(d) The Company is in compliance with, and has complied, in all material respects with the applicable provisions of the Sarbanes-Oxley Act of 2002 and the related rules and regulations promulgated under such act or the Exchange Act (collectively, "Sarbanes-Oxley"). The Company has previously made available to Holdings and Merger Sub copies of all certificates delivered by officers and employees of the Company, including the Company's chief executive officer and chief financial officer, to the Board of Directors or any committee thereof pursuant to the certification requirements relating to the Company 2004 Form 10-K. The management of the Company has (i) implemented disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act) to ensure that material information relating to the Company and its Subsidiaries is made known to the management of the Company by others within those entities and (ii) disclosed, based on its most recent evaluation, to the Company's outside auditors and the audit committee of the Board of Directors of the Company (A) all significant deficiencies and material weaknesses in the design or operation of internal controls (as defined in Rule 13a-15(f) of the Exchange Act) that are reasonably likely to materially affect the Company's ability to record, process summarize and report financial data and (B) any fraud, whether or not material, that involves management or other employees who, in each case, have a significant role in the Company's internal controls.

(e) The Company has provided to Holdings and Merger Sub a draft of the Form 10-Q with respect to the quarterly period ended October 30, 2005 (the "Draft 10-Q") which the Company expects to file with the SEC on or about December 8, 2005. The Draft 10-Q (i) was prepared in accordance with the requirements of the Exchange Act, as in effect at the time it was delivered to Holdings and Merger Sub, (ii) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading and (iii) fairly presents, the consolidated financial position of the Company and its Subsidiaries as of the date delivered and the consolidated statements of operations and cash flows of the Company for the period indicated, subject to normal and recurring non-material year-end adjustments.

SECTION 3.7. *Absence of Certain Changes or Events.* Since January 30, 2005, except as contemplated by this Agreement or as set forth in *Section 3.7* of the Company Disclosure Schedule or in the SEC Reports filed prior to the date of this Agreement, there has not been:

(a) any event or state of fact that, individually or in the aggregate, has had or is reasonably likely to result in a Material Adverse Effect; or

(b) any event, action or occurrence, that, if taken after the date hereof without the consent of Holdings and Merger Sub, would violate *Section 4.1* hereof.

SECTION 3.8. *Litigation.* Except as disclosed in the SEC Reports filed prior to the date of this Agreement or in *Section 3.8* of the Company Disclosure Schedule, there are no claims, actions, suits, arbitrations, grievances, proceedings or investigations pending or, to the knowledge of the Company, threatened against the Company or any of its Subsidiaries or any of their respective properties or rights of the Company or any of its Subsidiaries or any of their respective officers or directors in their capacity as such, before any Governmental Entity, nor any internal investigations (other than investigations in the ordinary course of the Company's or any of its Subsidiaries' compliance programs) being conducted by the Company or any of its Subsidiaries nor have any acts of alleged misconduct by the Company or any of its Subsidiaries been reported to the Company or any of its Subsidiaries, which would reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any of its Subsidiaries nor any of their respective properties is subject to any order, judgment, injunction or decree material to the conduct of the businesses of the Company or its Subsidiaries.

SECTION 3.9. *Employee Benefit Plans.* *Section 3.9* of the Company Disclosure Schedule sets forth a list of all employee welfare benefit plans (as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")), employee pension benefit plans (as

defined in Section 3(2) of ERISA) and all other bonus, stock option, restricted stock grant, stock purchase, benefit, profit sharing, savings, retirement, disability, insurance, incentive, deferred compensation and other similar fringe or employee benefit plans, programs or arrangements sponsored, maintained, contributed to or required to be contributed to by the Company or any other entity, whether or not incorporated, that together with the Company would be deemed a "single employer" for purposes of Section 414 of the Code or Section 4001 of ERISA (an "ERISA Affiliate") for the benefit of, or relating to, any current or former employee, director or other independent contractor of, or consultant to, the Company or any of its Subsidiaries (together, the "Employee Plans"). The Company has delivered to Holdings and Merger Sub true and complete copies of (i) all Employee Plans, together with all amendments thereto, (ii) the latest Internal Revenue Service determination letters obtained with respect to any Employee Plan intended to be qualified under Section 401(a) or 501(a) of the Code, (iii) the two most recent annual actuarial valuation reports, if any, (iv) the two most recently filed Forms 5500 together with Schedule A and/or B thereto, if any, (v) the "summary plan description" (as defined in ERISA), if any, and all modifications thereto communicated to employees, and (vi) the two most recent annual and periodic accountings of related plan assets. The Company has delivered to Holdings and Merger Sub a correct and complete list of each Option, including the holder, date of grant, exercise price and number of shares of Company Common Stock subject thereto. Neither the Company or any of its Subsidiaries nor, to the knowledge of the Company, any of their respective directors, officers, employees or agents has, with respect to any Employee Plan, engaged in or been a party to any "prohibited transaction" (as defined in Section 4975 of the Code or Section 406 of ERISA), which could result in the imposition of either a penalty assessed pursuant to Section 502(i) of ERISA or a tax imposed by Section 4975 of the Code, in each case applicable to the Company or any of its Subsidiaries or any Employee Plan. Except as set forth in *Section 3.9* of the Company Disclosure Schedule, all Employee Plans have been approved and administered in accordance with their terms and are in compliance in all material respects with the currently applicable requirements prescribed by all statutes, orders, or governmental rules or regulations currently in effect with respect to such Employee Plans, including, but not limited to, ERISA and the Code and there are no pending or, to the knowledge of the Company, threatened claims, lawsuits or arbitrations (other than routine claims for benefits), relating to any of the Employee Plans, or the assets of any trust for any Employee Plan. Each Employee Plan intended to qualify under Section 401(a) of the Code, and the trusts created thereunder intended to be exempt from tax under the provisions of Section 501(a) of the Code, either (i) has received a favorable determination letter from the Internal Revenue Service to such effect or (ii) is still within the "remedial amendment period," as described in Section 401(b) of the Code and the regulations thereunder. All contributions or payments required to be made or accrued before the Effective Time under the terms of any Employee Plan will have been made by the Effective Time. Neither the Company nor any of its ERISA Affiliates contributes, nor within the six-year period ending on the date hereof has any of them contributed or been obligated to contribute, to any plan, program or agreement which is a "multiemployer plan" (as defined in Section 3(37) of ERISA) or which is subject to Section 412 of the Code or Section 302 or Title IV of ERISA. No Employee Plan provides medical, surgical, hospitalization, death or similar benefits (whether or not insured) for employees or former employees of the Company or any of its Subsidiaries for periods extending beyond their retirement or other termination of service, other than coverage mandated by applicable law. No condition exists that would prevent the Company or any of its Subsidiaries from amending or terminating any Employee Plan providing health or medical benefits in respect of any active employee of the Company or any of its Subsidiaries. Except as set forth in *Section 3.9* of the Company Disclosure Schedule, no amounts payable under any Employee Plan or otherwise will fail to be deductible to the Company, the Surviving Corporation or their Subsidiaries for federal income tax purposes by virtue of Section 162(m) or 280G of the Code. Except as set forth in *Section 3.9* of the Company Disclosure Schedule, the consummation of the transactions contemplated by this Agreement will not, either alone or in combination with any other event, (i) entitle any current or former employee, director or officer of the Company or any of its Subsidiaries to severance pay or any other

payment, (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such employee, director or officer or (iii) require the Company to place in trust or otherwise set aside any amounts in respect of severance pay or otherwise. The assets of the Company's Benefit Reserve Trust established in respect of the Company's Select Executive Retirement Plan have a fair market value not less than the benefit liabilities under the Company's Select Executive Retirement Plan and may be liquidated within three business days at such fair market value (less normal transaction costs). The maximum amount of cash compensation and benefits that could be payable by the Company or any Subsidiary under all Employee Plans and any other compensatory plan, program or agreement to which the Company or any Subsidiary is a party, as a result (in whole or in part) of the transactions contemplated by this Agreement does not exceed $17.5 million (based upon the assumptions set forth in *Section 3.9* of the Company Disclosure Schedule). No "leased employees," as that term is defined in Section 414(n) of the Code, perform services for the Company or any Subsidiary. Neither the Company nor any Subsidiary has used the services of workers provided by third party contract labor suppliers, temporary employees, such "leased employees," or individuals who have provided services as independent contractors to an extent that would reasonably be expected to result in the disqualification of any Employee Plan or the imposition of penalties or excise taxes with respect to any Employee Plan by the Internal Revenue Service, the Department of Labor, or any other Governmental Entity. Except for determination letters issued by the Internal Revenue Service with respect to plans intended to qualify under Section 401(a) of the Code, neither the Company, any Subsidiary nor any ERISA Affiliate is a party to any agreement or understanding, whether written or unwritten, with the Internal Revenue Service, the Department of Labor or the Pension Benefit Guaranty Corporation in regard to any Employee Plan. No representations or communications, oral or written, with respect to the participation, eligibility for benefits, vesting, benefit accrual or coverage under any Employee Plan have been made to current or former employees or directors (or any of their representatives or beneficiaries) of the Company or any Subsidiary that are not in accordance with the terms and conditions of the Employee Plans.

SECTION 3.10. *Information Supplied.* None of the information to be supplied by the Company, specifically for inclusion or incorporation by reference in the Proxy Statement will, on the date it is first mailed to the holders of the Company Common Stock and on the date of the Company Shareholders' Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. If, at any time prior to the date of the Company Shareholders' Meeting, any event with respect to the Company or any of its Subsidiaries, or with respect to information supplied by or on behalf of the Company specifically for inclusion in the Proxy Statement, shall occur which is required to be described in an amendment of, or supplement to, the Proxy Statement, such event shall be so described by the Company, and provided in writing to Merger Sub. All documents that the Company is responsible for filing with the SEC in connection with the transactions contemplated herein, to the extent relating to the Company or its Subsidiaries or other information supplied by the Company for inclusion therein, will comply as to form, in all material respects, with the provisions of the Exchange Act and the respective rules and regulations thereunder, and each such document required to be filed with any Governmental Entity will comply in all material respects with the provisions of applicable law as to the information required to be contained therein. Notwithstanding the foregoing, the Company makes no representation or warranty with respect to the information supplied or to be supplied by either Merger Sub or Holdings for inclusion in the Proxy Statement.

SECTION 3.11. *Conduct of Business; Permits.* Except as disclosed in the SEC Reports filed prior to the date of this Agreement or in *Section 3.11* of the Company Disclosure Schedule, the business of the Company and each of its Subsidiaries is not being (and since January 1, 2002 has not been) conducted in default or violation of any term, condition or provision of (i) the Restated Articles of Incorporation or Amended and Restated By-Laws of the Company or the comparable charter

documents or by-laws of any of its Subsidiaries, (ii) any note, bond, mortgage, indenture, contract, agreement, lease or other instrument or agreement of any kind to which the Company or any of its Subsidiaries is now a party or by which the Company or any of its Subsidiaries or any of their respective properties or assets may be bound, or (iii) any federal, state, county, regional, municipal, local or foreign statute, law, ordinance, rule, regulation, judgment, decree, order, concession, grant, franchise, permit or license or other governmental authorization or approval applicable to the Company or any of its Subsidiaries or their respective businesses, including, without limitation, Regulatory Laws, except, with respect to the foregoing clauses (ii) and (iii), defaults or violations that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The material permits, licenses, approvals, certifications and authorizations from any Governmental Entity, including, without limitation, those obtained under Regulatory Laws (collectively, "Permits") held by the Company and each of its Subsidiaries are valid and sufficient in all material respects for all business presently conducted by the Company and its Subsidiaries. Except as set forth on *Section 3.11* of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries has received any written claim or notice nor has any knowledge indicating that the Company or any of its Subsidiaries is not in compliance with the terms of any such Permits and with all requirements, standards and procedures of the Governmental Entity which issued them, or any limitation or proposed limitation on any Permit, except where the failure to be in compliance would not reasonably be expected to result in a Material Adverse Effect. Except as set forth on *Section 3.11* of the Company Disclosure Schedule, none of the Permits will lapse, terminate or otherwise cease to be valid as a result of the consummation of the transactions contemplated hereby.

SECTION 3.12. *Taxes.*

(a) Except as set forth in *Section 3.12* of the Company Disclosure Schedule:

(i) each of the Company and its Subsidiaries has duly and timely filed all Tax Returns required to be filed by it, and all such Tax Returns are true, correct and complete except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect;

(ii) each of the Company and its Subsidiaries has timely paid all Taxes required to be paid by it (whether or not shown due on any Tax Return), except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect;

(iii) each of the Company and its Subsidiaries has made adequate provision in the financial statements of the Company (in accordance with GAAP) for all Taxes of the Company and its Subsidiaries not yet due, except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect;

(iv) each of the Company and its Subsidiaries has complied with all applicable Laws relating to the payment and withholding of Taxes and has, within the time and manner prescribed by Law, withheld and paid over to the proper tax authorities all amounts required to be withheld and paid over by it, except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect;

(v) no pending or threatened audit, proceeding, examination or litigation or similar claim has been commenced or is presently pending with respect to the Company or any of its Subsidiaries, except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect; and

(vi) no written claim has been made by any tax authority in a jurisdiction where the Company and its Subsidiaries does not file a Tax Return that any of the Company or any of its Subsidiaries is or may be subject to taxation in that jurisdiction which would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(b) Neither the Company nor any of its Subsidiaries has engaged in any transaction that gives rise to (A) a registration obligation under Section 6111 of the Code or the Treasury Regulations thereunder, (B) a list maintenance obligation under Section 6112 of the Code or the Treasury Regulations thereunder, or (C) a disclosure obligation as a "reportable transaction" under Section 6011 of the Code and the Treasury Regulations thereunder.

(c) There are no Liens for Taxes upon the assets or properties of any of the Company or its Subsidiaries, except for Liens which arise by operation of Law with respect to current Taxes not yet due and payable.

(d) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, neither the Company nor any of its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any (A) change in method of accounting for a taxable period ending on or prior to the Closing Date, or (B) "closing agreement," as described in Section 7121 of the Code (or any corresponding provision of state, local or foreign Law), entered into on or prior to the Closing Date, or (C) any ruling received from the Internal Revenue Service.

(e) The Company has previously delivered or made available to Holdings or Merger Sub complete and accurate copies of each of (i) all audit reports, letter rulings, technical advice memoranda, and similar documents issued by any tax authority relating to the United States Federal, state, local or foreign Taxes due from or with respect to the Company and its Subsidiaries and (ii) any closing agreements entered into by any of the Company and its Subsidiaries with any tax authority in each case existing on the date hereof.

(f) Neither the Company nor any of its Subsidiaries is or has been a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(g) Neither the Company nor any of its Subsidiaries has constituted a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution of stock to which Section 355 of the Code (or so much of Section 356 of the Code as relates to Section 355 of the Code) applies and which occurred within two years of the date of this Agreement.

SECTION 3.13. *Environmental Matters*.

(a) Except as set forth in *Section 3.13(a)* of the Company Disclosure Schedule, the Company and each of its Subsidiaries is in compliance with all applicable Environmental Laws (which compliance includes, but is not limited to, the possession by the Company and each of its Subsidiaries of all permits and other governmental authorizations required under applicable Environmental Laws, and compliance with the terms and conditions thereof), except where failure to be in compliance would not reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any of its Subsidiaries has received any written communication, whether from a Governmental Entity, citizens group, employee or otherwise, alleging that the Company or any of its Subsidiaries is not in such compliance, and there are no past or present actions, activities, circumstances, conditions, events or incidents that are reasonably likely to prevent or interfere with such compliance in the future, in each case which would reasonably be expected to result in a Material Adverse Effect.

(b) Except as set forth in *Section 3.13(b)* of the Company Disclosure Schedule, there is no Environmental Claim pending or, to the best knowledge of the Company, threatened, against the Company or any of its Subsidiaries or, to the best knowledge of the Company, against any Person whose liability for any Environmental Claim the Company or any of its Subsidiaries has or may

have retained or assumed either contractually or by operation of law, in each case which would reasonably be expected to result in a Material Adverse Effect.

(c) Except as set forth in *Section 3.13(c)* of the Company Disclosure Schedule, there are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the Release or presence of any Hazardous Material which could form the basis of any Environmental Claim against the Company or any of its Subsidiaries, or to the best knowledge of the Company, against any Person whose liability for any Environmental Claim the Company has or may have retained or assumed either contractually or by operation of law, in each case which would reasonably be expected to result in a Material Adverse Effect.

(d) Except as set forth in *Section 3.13(d)* of the Company Disclosure Schedule, the Company has delivered to Holdings and Merger Sub true, complete and correct copies and results of any reports, studies, analyses, tests or monitoring possessed by the Company or any of its Subsidiaries which have been prepared since January 1, 2002 pertaining to Hazardous Materials in, on, beneath or adjacent to any property currently or formerly owned, operated, occupied or leased by the Company or any of its Subsidiaries, or regarding the Company's or any of its Subsidiaries' compliance with applicable Environmental Laws.

SECTION 3.14. *Title to Assets; Liens*.

(a) *Leased Real Property.* Set forth in *Section 3.14(a)* of the Company Disclosure Schedule is a list of all real property leased by the Company or any of its Subsidiaries. Each of the leases relating to Leased Real Property is a valid and subsisting leasehold interest of the Company or any of its Subsidiaries. Except as disclosed on *Section 3.14(a)* of the Company Disclosure Schedule, each Leased Real Property is free of subtenancies and other occupancy rights and Liens (other than Permitted Liens), and is a valid and binding obligation of the Company or any of its Subsidiaries, enforceable against the Company or any of its Subsidiaries in accordance with its terms.

(b) *Owned Real Property.* Set forth in *Section 3.14(b)* of the Company Disclosure Schedule is a complete list of all real property and interests in real property owned in fee simple by the Company or any of its Subsidiaries (the "Owned Real Property"). The Company or a Subsidiary of the Company has good, valid and marketable fee simple title to the Owned Real Property. Except as disclosed on *Section 3.14(b)* of the Company Disclosure Schedule, each Owned Real Property is free and clear of any Lien, except Permitted Liens.

(c) For purposes of this Agreement, "Leased Real Property" shall mean the leasehold or subleasehold interests and any other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interests in real property held by the Company or any of its Subsidiaries under the Real Property Leases.

(d) For purposes of this Agreement, "Permitted Liens" shall mean: (i) liens for current Taxes that are not yet due or delinquent or are being contested in good faith by appropriate proceedings and for which adequate reserves have been taken on the financial statements contained in the SEC Reports; (ii) statutory liens or landlords', carriers', warehousemen's, mechanics', suppliers', materialmen's, repairmen's liens or other like Liens arising in the ordinary course of business with respect to amounts not yet overdue or are being contested in good faith by appropriate proceedings and for which adequate reserves have been taken on the financial statements contained in the SEC Reports; (iii) with respect to the Real Property, minor title defects or irregularities that do not, individually or in the aggregate, materially impair the value or use of such property, the consummation of this Agreement or the operations of the Company and its Subsidiaries; (iv) as to any Leased Real Property, any Lien affecting solely the interest of the landlord thereunder and not the interest of the tenant thereunder, which does not materially impair the value or use of such Leased Real Property; and (v) Liens securing indebtedness of the Company under the Credit Agreement, which will be retired in connection with the transactions contemplated hereby.

(e) For purposes of this Agreement, "Real Property" shall mean the Leased Real Property and the Owned Real Property.

(f) For purposes of this Agreement, "Real Property Leases" shall mean the real property leases, subleases, licenses or other agreements, including all amendments, extensions, renewals, guaranties or other agreements with respect thereto, pursuant to which the Company or any of its Subsidiaries is a party.

(g) Each of the Company and its Subsidiaries has good and marketable fee title to, or, in the case of leased assets, has good and valid leasehold interests in, all of its tangible and intangible assets, real, personal and mixed, used or held for use in, or which are necessary to conduct, the respective business of the Company and its Subsidiaries as currently conducted, free and clear of any Liens, except Permitted Liens.

SECTION 3.15. *Real Property*.

(a) Except as set forth in *Section 3.15(a)* of the Company Disclosure Schedule, all buildings, structures, fixtures, building systems and equipment included in the Real Property (the "Structures") are in reasonably good condition and repair in all material respects and sufficient for the operation of the business of the Company, subject to reasonable wear and tear and subject to replacements and upgrades of fixed assets consistent with the Company's capital expenditures budget and in the ordinary course of business. There are no facts or conditions affecting any of the Structures which would interfere in any material respect with the use or occupancy of the Structures or any portion thereof in the operation of the business of the Company.

(b) Except as set forth in *Section 3.15(b)(i)* of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries has leased or otherwise granted to any Person (other than pursuant to this Agreement) any right to occupy or possess or otherwise encumber any portion of the Real Property other than in the ordinary course of business. Except as set forth in *Section 3.15(b)(ii)* of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries has vacated or abandoned any portion of the Real Property or given notice to any third party of their intent to do the same.

(c) Except as set forth on *Section 3.15* of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries is a party to or obligated under any option, right of first refusal or other contractual right to sell, dispose of or lease any of the Real Property or any portion thereof or interest therein to any Person (other than pursuant to this Agreement). Neither the Company nor any of its Subsidiaries is a party to any agreement or option to purchase any real property or interest therein.

(d) Except as set forth on *Section 3.15* of the Company Disclosure Schedule, neither the Company nor any applicable Subsidiary has received notice of or has knowledge of an expropriation or condemnation proceeding pending, threatened or proposed against the Real Property.

(e) The present use of the land and Structures on the Real Property are in conformity in all material respects with all applicable laws, rules, regulations and ordinances, including, without limitation, all applicable zoning laws, ordinances and regulations and with all registered deeds, restrictions of record or other agreements affecting such Real Property, and the Company has no knowledge of any proposed change therein that would so affect any of the Real Property or its use and the Company has no knowledge of any violation thereof. To the Company's or any applicable Subsidiary's knowledge, there exists no conflict or dispute with any regulatory authority or other Person relating to any Real Property or the activities thereon which would be reasonably likely to result in a Material Adverse Effect. No damage or destruction has occurred with respect to any of the Real Property that would reasonably be expected to result in a Material Adverse Effect.

(f) With respect to the Leased Real Property:

(i) except as disclosed on *Section 3.15(f)(i)* of the Company Disclosure Schedule, true, correct and complete copies of the Real Property Leases have been delivered to Holdings and Merger Sub prior to the date hereof and such Real Property Leases have not been amended or modified since that date;

(ii) (A) there are no material disputes with respect to each Real Property Lease; and (B) except as disclosed on *Section 3.15(f)(ii)* of the Company Disclosure Schedule, neither the Company, nor, to the knowledge of the Company, any other party to each Real Property Lease is in breach or default under such Real Property, and no event has occurred or failed to occur or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a breach or default, or permit the termination, modification or acceleration of rent under such Real Property Lease;

(iii) except as disclosed on *Section 3.15(f)(iii)* of the Company Disclosure Schedule, no consent by the landlord under the Real Property Leases is required in connection with the consummation of the transaction contemplated herein;

(iv) except as disclosed on *Section 3.15(f)(iv)* of the Company Disclosure Schedule the Company or a Subsidiary of the Company has non-disturbance agreements with the landlord's lender with respect to each Real Property Lease;

(v) none of the Leased Real Property has been pledged or assigned by the Company or any of its Subsidiaries or is subject to any Liens (other than pursuant to this Agreement or Permitted Liens);

(vi) *Section 3.15(f)(vi)* of the Company Disclosure Schedule sets forth a summary of all construction allowances payable under the Real Property Leases and the amounts thereof which, as of the date hereof, have been drawn by the Company or any of its Subsidiaries; and

(vii) the Company does not owe, nor will it owe in the future, any brokerage commissions or finder's fees with respect to any Real Property Lease which have not been accrued or reserved for in the Company's financial statements.

(g) Set forth in *Section 3.15(g)* of the Company Disclosure Schedule is a list of all construction and material alteration projects currently ongoing with respect to any Real Property (the "Construction Projects"). The Construction Projects are proceeding in a workmanlike fashion in compliance in all material respects with all applicable laws, rules, regulations and ordinances, and, to the Company's knowledge, there are no facts or conditions affecting any of the Construction Projects which would interfere in any significant respect with the completion of the Construction Projects, or the use, occupancy or operation thereof, which interference would reasonably be expected to result in a Material Adverse Effect. No Construction Project or portion thereof is dependent for its access, operation or utility on any land, building or other improvement not included in the Real Property.

SECTION 3.16. *Intellectual Property*.

(a) *Section 3.16* of the Company Disclosure Schedule sets forth a true, correct and complete list of all material U.S. and foreign (i) issued Patents and Patent applications, (ii) Trademark registrations and applications, (iii) Copyright registrations and applications and (iv) Software, in each case, which is owned by the Company or its Subsidiaries. The Company or one of its Subsidiaries is the sole and exclusive beneficial and record owner of all of the material Intellectual Property Rights set forth in *Section 3.16* of the Company Disclosure Schedule, and all such Intellectual Property Rights are subsisting, valid, and enforceable.

(b) The Company and its Subsidiaries own or have a valid right to use, free and clear of all Liens, all Intellectual Property Rights necessary, or used or held for use in connection with the business of the Company and its Subsidiaries, taken as a whole, except where the failure to so own or have a valid right to use such Intellectual Property Rights, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(c) Neither the Company nor any of its Subsidiaries has infringed, misappropriated or violated in any material respect any Intellectual Property Rights of any third party, and there has been no such claim asserted or, to the knowledge of the Company, threatened since January 1, 2002, against the Company or any of its Subsidiaries, except where such infringements, misappropriations or violations, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(d) Except as set forth in *Section 3.16(d)*, of the Company Disclosure Schedule, to the Company's knowledge, no third Person has infringed, misappropriated or violated any Intellectual Property Rights owned or exclusively licensed by or to the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries has asserted or threatened such a claim against any Person since January 1, 2002, except where such infringements, misappropriations or violations, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(e) As used herein, "Intellectual Property Rights" means all U.S. and foreign (i) patents, patent applications, patent disclosures, and all related continuations, continuations-in-part, divisionals, reissues, re-examinations, substitutions, and extensions thereof ("Patents"), (ii) trademarks, service marks, trade names, domain names, logos, slogans, trade dress, and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing ("Trademarks"), (iii) copyrights and copyrightable subject matter ("Copyrights"), (iv) rights of publicity, (v) computer programs (whether in source code, object code, or other form), databases, compilations and data, technology supporting the foregoing, and all documentation, including user manuals and training materials, related to any of the foregoing ("Software"), (vi) trade secrets and all confidential information, know-how, inventions, proprietary processes, formulae, models, and methodologies, (vii) all rights in the foregoing and in other similar intangible assets, (viii) all applications and registrations for the foregoing and (ix) all rights and remedies against infringement, misappropriation, or other violation thereof.

SECTION 3.17. *Material Contracts*.

(a) Except as set forth in the SEC Reports filed prior to the date of this Agreement or in *Section 3.17* of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries is a party to or bound by:

(i) any "material contract" (as defined in Item 601(b) (10) of Regulation S-K of the SEC);

(ii) any contract or agreement for the purchase of materials or personal property from any supplier or for the furnishing of services to the Company or any of its Subsidiaries that involves future aggregate annual payments by the Company or any of its Subsidiaries of $250,000 or more;

(iii) any contract or agreement for the sale, license or lease (as lessor) by the Company or any of its Subsidiaries of services, materials, products, supplies or other assets, owned or leased by the Company or any of its Subsidiaries, that involves future aggregate annual payments to the Company or any of its Subsidiaries of $250,000 or more;

(iv) any contract, agreement or instrument relating to or evidencing indebtedness for borrowed money of the Company or any of its Subsidiaries in the amount of $50,000 or more;

(v) any non-competition agreement or any other agreement or obligation which purports to limit in any material respect the manner in which, or the localities in which, the business of the Company or any of its Subsidiaries may be conducted;

(vi) any voting or other agreement governing how any shares of Company Common Stock shall be voted other than the Voting Agreement; or

(vii) any contract, agreement or arrangement to allocate, share or otherwise indemnify for Taxes.

The foregoing contracts and agreements to which the Company or any of its Subsidiaries is a party or are bound are collectively referred to herein as "Company Material Contracts."

(b) Each Company Material Contract is valid and binding on the Company or one of its Subsidiaries and is in full force and effect, and the Company or one of its Subsidiaries as applicable, has performed all obligations required to be performed by it to date under each Company Material Contract, except where such noncompliance would not reasonably be expected to result in a Material Adverse Effect. The Company has not violated, defaulted under or terminated, nor has the Company given or received notice of, any violation, default or termination under (nor, to the knowledge of the Company, does there exist any condition which with the passage of time or the giving of notice or both would result in such a violation, default or termination under) any Company Material Contract, except where such violations, defaults or terminations would not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.18. *Brokers*. Except for the Persons set forth on *Section 3.18* of the Company Disclosure Schedule, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company. The Company has delivered to Holdings and Merger Sub true and complete information concerning the financial and other arrangements between the Company and its Subsidiaries and the persons set forth on *Section 3.18* of the Company Disclosure Schedule pursuant to which such firm(s) would be entitled to any payment as a result of the transactions contemplated hereby.

SECTION 3.19. *Board Action.* The Board of Directors, at a meeting duly called and held, at which all of the directors were present, duly and unanimously: (i) approved and adopted this Agreement and the transactions contemplated hereby, including the Merger; (ii) resolved to recommend that this Agreement and the transactions contemplated hereby, including the Merger, be submitted for consideration by the Company's shareholders at the Company Shareholders' Meeting; (iii) resolved to recommend that the shareholders of the Company approve this Agreement and the transactions contemplated hereby, including the Merger; and (iv) determined that this Agreement and the transactions contemplated hereby, including the Merger, are fair to, advisable and in the best interests of the shareholders of the Company.

SECTION 3.20. *Opinion of Financial Advisor.* The Company has received the written opinion of Piper Jaffray & Co., the Company's sole financial advisor, dated December 8, 2005, to the effect that, as of the date hereof, the Merger Consideration to be received by the Company's shareholders as provided herein is fair to such shareholders from a financial point of view. The Company has delivered a copy of the written opinion to Holdings and Merger Sub.

SECTION 3.21. *Control Share Acquisition.* The Company has taken all actions necessary and within its authority such that no restrictive provision of any "fair price," "moratorium," "control share acquisition," "business combination," "stockholder protection," "interested shareholder" or other

similar anti-takeover statute or regulation (including, without limitation, Sections 351.407 and 351.459 of the Missouri BCL) (each, a "Takeover Statute") or restrictive provision of any applicable provision in the Restated Articles of Incorporation or Amended and Restated By-Laws of the Company or comparable charter documents and By-laws of any of its Subsidiaries is, or at the Effective Time will be, applicable to the Company, its Subsidiaries, Holdings, Merger Sub, Company Common Stock, the Merger or any other transaction contemplated by this Agreement or the Voting Agreement.

SECTION 3.22. *Rights Agreement.* The rights to purchase shares of Series A Junior Participating Preferred Stock of the Company, issued pursuant to a Rights Agreement, dated June 16, 1995, as amended, by and between the Company and Boatmen's Trust Company, expired in accordance with their terms on June 15, 2005.

SECTION 3.23. *Vote Required.* The affirmative vote of the holders of two-thirds of the outstanding shares of Company Common Stock is the only vote of the Company's shareholders necessary (under applicable law or otherwise), to approve this Agreement, and the transactions contemplated by this Agreement, including the Merger (the "Company Shareholder Approval").

SECTION 3.24. *Insurance.* Each of the Company and its Subsidiaries maintains insurance policies (the "Insurance Policies") against all risks of a character and in such amounts as are usually insured against by similarly situated companies in the same or similar businesses. Each Insurance Policy is in full force and effect and is valid, outstanding and enforceable, and all premiums due thereon have been paid in full. None of the Insurance Policies will terminate or lapse (or be affected in any other materially adverse manner) by reason of the transactions contemplated by this Agreement. Each of the Company and its Subsidiaries has complied in all material respects with the provisions of each Insurance Policy under which it is the insured party. No insurer under any Insurance Policy has cancelled or generally disclaimed liability under any such policy or, to the Company's knowledge, indicated any intent to do so or not to renew any such policy. All material claims under the Insurance Policies have been filed in a timely fashion. Since the Company's formation, there have been no historical gaps in insurance coverage of the Company or any of its Subsidiaries.

SECTION 3.25. *Suppliers.* Set forth in *Section 3.25* of the Company Disclosure Schedule is a list of the ten largest suppliers of the Company on a consolidated basis based on the dollar value of materials, products or services purchased by the Company or any of its Subsidiaries for the fiscal year ended January 30, 2005. Since such date, there has not been, nor as a result of the Merger is there anticipated to be, any change in relations with any of the major suppliers of the Company or its Subsidiaries that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect. The existing suppliers of the Company and its Subsidiaries are adequate for the operation of the Company's business as operated on the date hereof.

SECTION 3.26. *Collective Bargaining; Labor Disputes; Compliance.* There are no collective bargaining agreements to which the Company or any of its Subsidiaries is a party or under which it is bound. The employees of the Company and its Subsidiaries are not represented by any unions. Neither the Company nor any of its Subsidiaries is currently, nor has been during the past three years, the subject of any union organizing campaign or drive. Neither the Company nor any of its Subsidiaries is currently, nor has been during the past five years, the subject of any strike, dispute, walk-out, work stoppage, slow down or lockout involving the Company or any of its Subsidiaries nor, to the knowledge of the Company after due inquiry, is any such activity threatened. Except as set forth on *Section 3.26* of the Company Disclosure Schedule, there are no employment agreements, severance agreements or severance plans or other documents, arrangements or understandings (whether written or oral) requiring the payment (or setting aside) of any amounts or the providing of any benefits (or acceleration, continuation or modification thereof) to any of the Company's or its Subsidiaries directors, officers or employees in the event of a termination of employment (with or without cause) or as a result of entering into this Agreement or the consummation of the transactions contemplated

hereby. Except as would not reasonably be expected to result in a Material Adverse Effect, (i) each of the Company and each of its Subsidiaries has complied with all laws relating to the employment and safety of labor, including the National Labor Relations Act and other provisions relating to wages, hours, benefits, collective bargaining and all applicable occupational safety and health acts and laws, (ii) neither the Company nor any of its Subsidiaries has engaged in any unfair labor practice or discriminated on the basis of race, age, sex, disability or any other protected category in its employment conditions or practices with respect to its employees, customers or suppliers, and (iii) no action, suit, complaint, charge, grievance, arbitration, employee proceeding or investigation by or before any Governmental Entity brought by or on behalf of any employee, prospective employee, former employee, retired employee, labor organization or other representative of the Company's and its Subsidiaries' employees is pending or, to the knowledge of the Company after due inquiry, threatened against the Company or any of its Subsidiaries, except as disclosed in *Section 3.26* of the Company Disclosure Schedule. Neither the Company nor any of its Subsidiaries is a party to or otherwise bound by any consent decree with or citation by any Governmental Entity relating to the Company's or its Subsidiaries' employees or employment practices relating to the Company's or its Subsidiaries' employees. The Company and its Subsidiaries are and have been in compliance with all notice and other requirements under the Worker Adjustment and Retraining Notification Act of 1988 (the "WARN Act") and any similar foreign, state or local law relating to plant closings and layoffs. Except as set forth on *Section 3.26* of the Company Disclosure Schedule, none of the employees of the Company and any of its Subsidiaries has suffered an "employment loss" (as defined in the WARN Act) within the three month period prior to the date of this Agreement.

SECTION 3.27. *Investment Company.* Neither the Company nor any Subsidiary of the Company is an "investment company" as defined under the Investment Company Act of 1940, as amended.

SECTION 3.28. *Transactions with Affiliates.*

(a) All transactions, agreements, arrangements or understandings between the Company or any of its Subsidiaries, on the one hand, and the Company's affiliates (other than wholly-owned subsidiaries of the Company) or other Persons, on the other hand (an "Affiliate Transaction"), that are required to be disclosed in the SEC Reports in accordance with Item 404 of Schedule S-K under the Securities Act have been so disclosed. There have been no Affiliate Transactions that are required to be disclosed under the Exchange Act pursuant to Item 404 of Schedule S-K under the Securities Act which have not already been disclosed in the SEC Reports.

(b) Any Affiliate Transaction at the time it was entered into and as of the time of any amendment or renewal thereof contained such terms, provisions and conditions as were at least as favorable to the Company or any of its Subsidiaries as would have been obtainable by the Company or any of its Subsidiaries in a similar transaction with an unaffiliated third party.

SECTION 3.29. *Absence of Restrictions on Business Activities.* Except as set forth in *Section 3.29* of the Company Disclosure Schedule, there is no agreement, judgment, injunction, ruling, decree or order of any Governmental Entity binding upon the Company or any of its Subsidiaries or any of their assets or properties which has had or could reasonably be expected to have the effect of prohibiting or impairing any business practice of the Company or any of its Subsidiaries or the conduct of business by the Company or any of its Subsidiaries as currently conducted or as proposed to be conducted by the Company or any of its Subsidiaries, except for impairments or impositions that are not material to the conduct of the business of the Company or any of its Subsidiaries. Except as set forth in *Section 3.29* of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries is subject to any non-competition, non-solicitation or similar restriction on their respective businesses.

SECTION 3.30. *Letters of Credit, Surety Bonds, Guarantees.* *Section 3.30* of the Company Disclosure Schedule sets forth, as of the date hereof, all standby letters of credit, performance or payment bonds, guarantee arrangements and surety bonds of any nature involving amounts in excess of

$100,000 relating to the Company or any of its Subsidiaries and the aggregate amount of all such instruments as of the date is set forth on *Section 3.30* of the Company Disclosure Schedule.

SECTION 3.31. *Certain Business Practices.* As of the date hereof, neither the Company nor any of its Subsidiaries nor any director, officer, employee or agent of the Company or any of its Subsidiaries has (a) used any funds for unlawful contributions, gifts, entertainment or other unlawful payments relating to political activity, (b) made any unlawful payment to any foreign or domestic government official or employee or to any foreign or domestic political party or campaign or violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, (c) consummated any transaction, made any payment, entered into any agreement or arrangement or taken any other action in violation of Section 1128B (b) of the Social Security Act, as amended, or (d) made any other unlawful payment.

ARTICLE IV

CONDUCT OF BUSINESS PENDING THE MERGER

SECTION 4.1. *Conduct of Business by the Company Pending the Merger.* The Company covenants and agrees on behalf of itself and its Subsidiaries that, between the date of this Agreement and the Effective Time, unless Holdings and Merger Sub shall otherwise consent in writing, the businesses of the Company and its Subsidiaries shall be conducted only in, and the Company shall not, and the Company shall not permit any of its Subsidiaries to, take any action except (i) in the ordinary course of business and in a manner consistent with past practice and (ii) as set forth in *Section 4.1* of the Company Disclosure Schedule; and the Company will use its reasonable best efforts to preserve substantially intact the business organization of the Company and its Subsidiaries, to keep available the services of the present officers, employees and consultants of the Company and its Subsidiaries and to preserve the present relationships of the Company and its Subsidiaries with customers, suppliers and other Persons with which the Company and its Subsidiaries have significant business relations and to maintain the Real Property and other material assets of the Company in good repair, order and condition (subject to normal wear and tear) consistent with current needs, replace the Company's inoperable, worn out or obsolete assets with assets of good quality consistent with past practices and current needs and, in the event of a casualty, loss or damage to any of such assets or properties prior to the Closing Date, whether or not the Company is insured, either repair or replace such damaged property to the condition it was in immediately prior to such casualty, loss or damage, and pay all applicable Taxes when due and payable. The Company covenants and agrees on behalf of itself and its Subsidiaries that the outstanding indebtedness under the revolving portion of the Company's Credit Agreement shall not exceed $10,000,000 immediately prior to the Effective Time. Without limiting the generality of the foregoing, except as (x) expressly contemplated by this Agreement or (y) set forth in *Section 4.1* of the Company Disclosure Schedule, the Company shall not, and shall not permit any of its Subsidiaries, without the prior written consent of Holdings and Merger Sub, to:

(a) amend (i) its Restated Articles of Incorporation or Amended and Restated By-Laws or comparable charter and organizational documents or (ii) any material term of any outstanding security issued by the Company or any of its Subsidiaries;

(b) (i) declare, set aside or pay any dividend or other distribution payable in cash, stock or property with respect to its capital stock (other than dividends paid by wholly-owned Subsidiaries of the Company to the Company or another wholly-owned Subsidiary of the Company), (ii) redeem, purchase or otherwise acquire, directly or indirectly, any of its capital stock or other securities, (iii) issue, sell, pledge, dispose of or encumber any (A) shares of its capital stock, (B) securities convertible into or exchangeable for, or options, warrants, calls, commitments or rights of any kind to acquire, any shares of its capital stock or (C) other securities of the Company or any of its Subsidiaries, other than (1) shares of Company Common Stock issued upon (x) the exercise

of Options outstanding on the date hereof in accordance with the Option Plans as in effect on the date hereof, (y) the exercise of Warrants outstanding on the date hereof in accordance with the Warrant Agreement or (z) the conversion of Notes outstanding on the date hereof in accordance with the terms thereof and (2) newly issued securities of Subsidiaries may be pledged to the lenders under the Credit Agreement in accordance with the terms thereof or (iv) split, combine or reclassify any of its outstanding capital stock or issue or authorize or propose the issuance of any of other securities in respect of, in lieu of or in substitution for, shares of its capital stock;

(c) acquire or agree to acquire (i) by merging or consolidating with, or by purchasing a substantial portion of the equity interests of, or by any other manner, any business or any corporation, partnership, joint venture, association or other business organization or division thereof or (ii) any assets, including real estate, except, with respect to clause (ii) above, purchases of inventory, equipment and supplies in the ordinary course of business consistent with past practice;

(d) except in the ordinary course of business consistent with past practice, amend, enter into or terminate any Company Material Contract, or waive, release or assign any material rights or claims thereunder;

(e) transfer, lease, license, sell, mortgage, pledge, dispose of, encumber or subject to any Lien any property or assets or cease to operate any assets, other than sales of excess or obsolete assets and sales of inventory and changes in amusement games in the ordinary course of business consistent with past practice;

(f) (i) enter into, amend or terminate any employment or severance agreement with or, except in accordance with the existing obligations of the Company or any of its Subsidiaries, grant any severance or termination pay to, any officer or director of the Company or any of its Subsidiaries or (ii) hire or agree to hire any new or additional officers at the Senior Vice President level or above;

(g) except as required to comply with applicable law, (i) adopt, enter into, terminate, amend or increase the amount or accelerate the payment or vesting of any benefit or award or amount payable under any Employee Plan or other arrangement for the current or future benefit or welfare of any director, officer or employee, other than in the case of employees who are not officers or directors in the ordinary course of business consistent with past practice, (ii) increase in any manner the compensation or fringe benefits of, or pay any bonus to, any director or, other than in the ordinary course of business consistent with past practice, officer or other employee, (iii) other than benefits accrued through the date hereof and other than in the ordinary course of business for employees other than officers or directors of the Company, pay any benefit not provided for under any Employee Plan, (iv) other than bonuses earned through the date hereof and other than in the ordinary course of business consistent with past practice for employees other than officers and directors, grant any awards under any bonus, incentive, performance or other compensation plan or arrangement or Employee Plan; *provided that* there shall be no grant or award to any director, officer or employee of stock options, restricted stock, stock appreciation rights, stock based or stock related awards, performance units, units of phantom stock or restricted stock, or any removal of existing restrictions in any Employee Plan or agreements or awards made thereunder or (v) take any action to fund or in any other way secure the payment of compensation or benefits under any employee plan, agreement, contract or arrangement or Employee Plan;

(h) (i) incur or assume any indebtedness, subject to the provisions of the second sentence of Section 4.1 above, (ii) incur or modify any material indebtedness or other liability, (iii) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other Person, except in the ordinary course of business and consistent with past practice or (iv) except for advances or prepayments in the ordinary course of

business in amounts consistent with past practice, make any loans, advances or capital contributions to, or investments in, any other Person (other than customary loans or advances to employees in accordance with past practice);

(i) change any accounting policies or procedures (including procedures with respect to reserves, revenue recognition, payments of accounts payable and collection of accounts receivable) used by it unless required by a change in applicable law or GAAP;

(j) make any change to any of its tax accounting principles or practices with respect to Taxes of the Company or any of its Subsidiaries;

(k) make any Tax election or change in any Tax election, amend any Tax Returns or enter into any settlement or compromise of any Tax liability of the Company or its Subsidiaries;

(l) pay, discharge, satisfy, settle or compromise any claim, litigation, liability, obligation (absolute, asserted or unasserted, contingent or otherwise) or any legal proceeding, except for any settlement or compromise involving less than $100,000, but subject to an aggregate maximum of $500,000, including all fees, costs and expenses associated therewith but excluding from such amounts any contribution from any insurance company or other parties to the litigation;

(m) enter into any negotiation with respect to, or adopt or amend in any respect, any collective bargaining agreement;

(n) enter into any material agreement or arrangement with any of its officers, directors, employees or any "affiliate" or "associate" of any of its officers or directors (as such terms are defined in Rule 405 under the Securities Act);

(o) enter into any agreement, arrangement or contract to allocate, share or otherwise indemnify for Taxes;

(p) enter into or consummate any sale/leaseback agreement or arrangement;

(q) except in the ordinary course of business consistent with past practice and except as prohibited in *subsection (e)* above, lease or otherwise dispose of or transfer any of its assets (including the capital stock of any Subsidiary of the Company);

(r) make, authorize or agree to make any capital expenditures, or enter into any agreement or agreements providing for payments, which, individually are in excess of $100,000, or in the aggregate are in excess of $500,000;

(s) enter into an agreement containing any provision or covenant limiting in any respect the ability of the Company or any of its Subsidiaries with respect to (i) selling any products or services of or to any other Person, (ii) engaging in any line of business, (iii) competing with or obtaining the products or services of any Person or limiting the ability of any Person to provide products or services to the Company or any of its Subsidiaries or (iv) selecting, opening or operating any store in any geographical area or location;

(t) terminate or fail to renew any Permit that is material to the conduct of the businesses of the Company or any of its Subsidiaries;

(u) revalue in any material respect any of its assets, including writing-down the value of inventory or writing-off notes or accounts receivable, other than in the ordinary course of business consistent with past practice;

(v) fail to pay any Taxes or other material debts when due (without giving effect to any grace periods);

(w) fail to maintain in full force and effect all self-insurance and insurance, as the case may be, currently in effect;

(x) fail to make in a timely manner any and all filings with the SEC required to be made under the Securities Act or the Exchange Act or the rules and regulations promulgated thereunder or any filing required under applicable law;

(y) amend, extend, renew, otherwise modify or terminate any of the Real Property Leases or enter into any new Real Property Lease requiring rental and other payments in excess of $100,000 annually;

(z) enter into an agreement, contract, commitment or arrangement to do any of the foregoing, or to authorize, recommend, propose or announce an intention to do any of the foregoing *(a)-(y)* of this *Section 4.1*; and

(aa) take any action or omit to take any action that would, or is reasonably likely to result in any of its representations and warranties contained in this Agreement becoming untrue, or in any of the conditions to the Merger set forth in *Article VI* of this Agreement not being satisfied.

SECTION 4.2. *No Solicitations.* The Company shall not and shall cause its Subsidiaries not to, directly or indirectly, through any officer, director, affiliate, employee, agent, financial advisor, representative or otherwise, (a) solicit or initiate any inquiries with respect to the submission of any Acquisition Proposal (as defined below), (b) participate in any discussions or negotiations regarding, or furnish to any Person any information with respect to, or otherwise cooperate in any way with, or knowingly assist or participate in, facilitate or encourage, any effort or attempt by any Person to make an inquiry in respect of or make any proposal or offer that constitutes, or may be reasonably be expected to lead to, any Acquisition Proposal or (c) enter into any agreement or agreement in principle providing for or relating to an Acquisition Proposal; *provided*, *however*, that (i) nothing contained in this *Section 4.2* or any other provision of this Agreement shall prohibit the Company or the Board of Directors from taking and disclosing to the Company shareholders pursuant to Rule 14d-9 or Rule 14e-2 promulgated under the Exchange Act, a position with respect to a tender or exchange offer by a third party and (ii) the Company may, prior to the approval by the Company shareholders of the Merger, in response to an unsolicited bona fide written proposal received on or after the date of this Agreement (and not withdrawn), with respect to an Acquisition Proposal from a third party, which did not result from a breach of this *Section 4.2*, furnish information to, and negotiate, explore or otherwise engage in substantive discussions with such third party only if, and only to the extent that (A) the Board of Directors, after consultation with and taking into account the advice of its financial advisors and outside legal counsel, determines in good faith that the Board of Directors would breach its fiduciary duties to shareholders under applicable law without taking such action, (B) prior to taking such action, the Company receives from such Person an executed confidentiality agreement having terms no more favorable than the Confidentiality Agreement, (C) the Board of Directors, after consultation with and taking into account the advice of its financial advisors and legal counsel, determines in good faith that such proposal would, if accepted, be reasonably likely to be consummated, taking into account all legal, financial and regulatory aspects of the proposal and the Person making the proposal, and (D) the proposal would, if consummated, result in a transaction that provides a higher per share price to its shareholders, from a financial point of view, than the transactions contemplated by this Agreement and for which financing, to the extent required, is then represented by bona fide commitment letters (such more favorable Acquisition Proposal hereinafter referred to as a "Superior Proposal"; *provided*, *that*, for purposes of the definition of Superior Proposal, the term Acquisition Proposal shall have the meaning assigned below, except that references to "15% or more" shall be deemed to be references to "50% or more"). The Company shall and shall cause its Subsidiaries and their respective officers, directors, affiliates, employees, agents, financial advisors and representatives to immediately cease and cause to be terminated any and all existing activities,

discussions or negotiations with any Person conducted heretofore with respect to any of the foregoing. The Company shall and shall cause its Subsidiaries to immediately notify Holdings and Merger Sub if any proposals are received by, any information is requested from, or any negotiations or discussions are sought to be initiated or continued with the Company or any of its Subsidiaries, in each case in connection with any Acquisition Proposal. Each notice shall contain the name of any Person making any such proposal, requesting such information or seeking such negotiations or discussions and a summary of the material terms and conditions of any proposals or offers and thereafter the Company shall keep Holdings and Merger Sub informed, on a current basis, of the status and terms of any such proposals or offers and the status of any such discussions or negotiations. The Company agrees that it will take the necessary steps to promptly inform the Persons referred to in the first sentence of this *Section 4.2* of the obligations undertaken in this *Section 4.2* and in the Confidentiality Agreement. The Company will promptly provide to Holdings and Merger Sub any information concerning the Company and its Subsidiaries provided to any other Person in connection with an Acquisition Proposal which was not previously delivered to Holdings and Merger Sub. The Company shall and shall cause its Subsidiaries to promptly request each Person that has heretofore executed a confidentiality agreement in connection with its consideration of acquiring the Company or any of its Subsidiaries to promptly return or destroy all written confidential information heretofore furnished to such Person (whether then in the possession of such Person or its advisors or representatives) by or on behalf of the Company or any of its Subsidiaries. The Company agrees not to release any third party from or waive any provisions of confidentiality in any confidentiality agreement to which the Company is a party or by which it is bound. Without limiting the foregoing, it is understood that any violation of the restrictions set forth in this *Section 4.2* by any officer, director, affiliate, employee, agent, financial advisor or representative of the Company or any of its Subsidiaries shall be deemed to be a breach of this *Section 4.2*. For purposes of this Agreement, "Acquisition Proposal" means any inquiry, proposal, offer or indication of interest from any Person (other than by or on behalf of Merger Sub or Holdings) relating to any direct or indirect acquisition or purchase (including any single or multiple-step transaction) of a business or assets of the Company or its Subsidiaries that generates 15% or more of the net revenues or net income, or constitutes 15% or more of the assets (as determined with respect to the financial statements contained in the most recent SEC Report and filed prior to such determination) of the Company or any of its significant Subsidiaries (as defined in Rule 1-02(w) of Regulation S-X promulgated under the Exchange Act) (a "Significant Subsidiary"), or 15% or more beneficial ownership (as determined pursuant to Rule 13d-3 under the Exchange Act) of any class of equity securities of the Company or any of its Significant Subsidiaries, any tender offer or exchange offer that if consummated would result in any Person beneficially owning (as determined pursuant to Rule 13d-3 under the Exchange Act) 15% or more of any class of equity securities of the Company or any of its Significant Subsidiaries or any merger, consolidation, business combination, recapitalization, reorganization, liquidation, dissolution or similar transaction involving the Company or any of its Significant Subsidiaries.

SECTION 4.3. *Fiduciary Duties.* The Board of Directors shall not (a) withdraw or modify or change in a manner adverse to Holdings and Merger Sub, the approval or recommendation by the Board of Directors of this Agreement and the Merger, (b) approve, recommend or cause the Company to enter into any written agreement with respect to any Acquisition Proposal or (c) propose to do any of the foregoing. Notwithstanding the foregoing, if the Board of Directors determines in good faith (after consultation with and taking into account the advice of its financial advisors and legal counsel) that an Acquisition Proposal is a Superior Proposal in accordance with the terms of this Agreement, the Board of Directors may withdraw its approval or recommendation of this Agreement and the Merger solely in order to concurrently enter into a definitive agreement prior to the time the Company shareholders shall have approved the Merger, providing for the consummation of a transaction with respect to such Superior Proposal and terminate this Agreement in accordance with *Section 7.1(f)(ii)* and *Section 7.2(b)*, but only if the Board of Directors determines in good faith (after consultation with

and taking into account the advice of its financial advisor and legal counsel) that the Board of Directors would breach its fiduciary duties to shareholders under applicable law without taking such action; *provided*, *however*, that (x) prior to taking such action, the Board of Directors shall have (1) given Holdings and Merger Sub at least five business days' prior written notice that the Company intends to take such action and provided Holdings and Merger Sub with a reasonable opportunity to respond to any such Superior Proposal (which response could include a proposal to revise the terms of the transactions contemplated hereby) and (2) fully considered any such response by Holdings and Merger Sub and concluded that, notwithstanding such response, such Acquisition Proposal continues to be a Superior Proposal in relation to the transactions contemplated hereby, as the terms hereof may be proposed to be revised by such response.

ARTICLE V

ADDITIONAL AGREEMENTS

SECTION 5.1. *Proxy Statement.* As promptly as practicable after the date of this Agreement, the Company shall prepare and file with the SEC the Proxy Statement in connection with the Merger. Holdings and Merger Sub will cooperate with the Company in connection with the preparation of the Proxy Statement including, but not limited to, furnishing to the Company any and all information regarding Holdings, Merger Sub and their respective affiliates as may be required to be disclosed therein. The Proxy Statement shall contain the recommendation of the Board of Directors that the Company's shareholders approve this Agreement and the transactions contemplated hereby. As promptly as possible after clearance by the SEC of the Proxy Statement, the Company will cause the Proxy Statement to be mailed to its shareholders.

SECTION 5.2. *Meeting of Shareholders of the Company.* The Company shall promptly take all action necessary in accordance with applicable law, the Restated Articles of Incorporation and the Amended and Restated By-Laws of the Company to convene the Company Shareholders' Meeting. The stockholder vote or consent required for approval of the Merger will be no greater than that set forth in the Missouri BCL. The Company shall use reasonable best efforts to solicit from shareholders of the Company proxies in favor of the Merger and shall take all other action necessary or, in the reasonable opinion of Merger Sub, advisable to secure any vote or consent of shareholders required by the Missouri BCL to effect the Merger.

SECTION 5.3. *Additional Agreements.* The Company, Merger Sub and Holdings will each comply in all material respects with all applicable laws and with all applicable rules and regulations of any Governmental Entity in connection with its execution, delivery and performance of this Agreement and the transactions contemplated hereby.

SECTION 5.4. *Notification of Certain Matters.* The Company shall give prompt notice to Holdings and Merger Sub and Holdings and Merger Sub shall give prompt notice to the Company, of (a) the occurrence or non-occurrence of any fact, event or circumstance whose occurrence or nonoccurrence would be likely to cause any representation or warranty contained in this Agreement to be untrue or inaccurate in any material respect at any time from the date hereof to the Effective Time, (b) any material failure of the Company or Merger Sub, as the case may be, or any officer, director, employee or agent thereof, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder and (c) the occurrence or non-occurrence of any fact, event or circumstance which has or is reasonably expected to result in a Material Adverse Effect; *provided*, *however*, that the delivery of any notice pursuant to this *Section 5.4* shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice.

SECTION 5.5. *Access to Information*.

(a) From the date hereof to the Effective Time, the Company shall and shall cause its Subsidiaries and their respective directors, officers, directors, employees, auditors and agents to, afford the directors, officers, employees, environmental and other consultants, attorneys, accountants financial advisors, representatives and agents of Holdings and Merger Sub and the anticipated sources of the Financing (the "Financing Sources"), reasonable access at all reasonable times to its directors, officers, employees, representatives, agents, properties, offices and other facilities and to all information systems, contracts, books and records (including Tax Returns, audit work papers and insurance policies), and shall furnish Holdings and Merger Sub and the Financing Sources with all financial, operating and other data and information Holdings and Merger Sub and the Financing Sources through their directors, officers, employees, consultants or agents, may reasonably request. No information received pursuant to this *Section 5.5* shall affect or be deemed to modify or update any representation and warranties of the Company and its Subsidiaries contained in this Agreement.

(b) Each of Holdings and Merger Sub agrees that it shall, and shall direct its affiliates and each of their respective officers, directors, employees, financial advisors, consultants and agents (the "Merger Sub Representatives"), to hold in strict confidence all data and information obtained by them from the Company in accordance with the Confidentiality Agreement which shall survive the execution an delivery of this Agreement, and any termination hereof pursuant to *Section 7.1* hereof.

SECTION 5.6. *Public Announcements.* Holdings, Merger Sub and the Company shall consult with each other before issuing any press release or otherwise making any public statements or announcements with respect to the Merger and shall not issue any such press release or make any such public statement before such consultation, except as may be required by applicable law or stock exchange rules, in which case, the party desiring to make a public statement or disclosure shall consult with the other parties and permit them opportunity to review and comment on the proposed disclosure to the extent practicable under the circumstances.

SECTION 5.7. *Approval and Consents; Cooperation.* Each of the Company, Holdings and Merger Sub shall cooperate with each other and use (and shall cause their respective Subsidiaries to use) its reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things, necessary, proper or advisable on their part under this Agreement and applicable laws to consummate and make effective the Merger and the other transactions contemplated by this Agreement as soon as practicable, including (a) preparing and filing as promptly as practicable all documentation to effect all necessary applications, notices, petitions, filings, Tax ruling requests and other documents and to obtain as promptly as practicable all consents, waivers, licenses, orders, registrations, approvals, Permits, Tax rulings and authorizations necessary or advisable to be obtained from any third party and/or any Governmental Entity in order to consummate the Merger or any of the other transactions contemplated by this Agreement (including, but not limited to, those approvals, consents, orders, registrations, declarations and filings required under *Section 3.5* (collectively, the "Required Approvals"), (b) taking all reasonable steps as may be necessary to obtain all such Required Approvals and (c) obtaining estoppel certificates with respect to each Leased Real Property. Without limiting the generality of the foregoing, each of the Company and Holdings and Merger Sub agree to make all necessary filings in connection with the Required Approvals as promptly as practicable after the date of this Agreement, and to use its reasonable best efforts to furnish or cause to be furnished, as promptly as practicable, all information and documents requested with respect to such Required Approvals, and shall otherwise cooperate with any applicable Governmental Entity or third party in order to obtain any Required Approvals in as expeditious a manner as possible. Each of the Company, Holdings and Merger Sub shall use its reasonable best efforts to resolve such objections, if any, as any Governmental Entity may threaten or assert with respect to this Agreement and the transactions

contemplated hereby in connection with the Required Approvals. In the event that a suit is instituted by a Person or Governmental Entity challenging this Agreement and the transactions contemplated hereby in any respect, including a claim that this Agreement of the transactions contemplated hereby are violative of applicable antitrust or competition laws, each of the Company, Holdings and Merger Sub shall use its reasonable best efforts to resist or resolve such suit. The Company, Holdings and Merger Sub each shall, upon request by the other, furnish the other with all information concerning itself, its Subsidiaries, affiliates, directors, officers and shareholders and such other matters as may reasonably be necessary or advisable in connection with the Proxy Statement or any other statement, filing, Tax ruling request, notice or application made by or on behalf of the Company, Holdings or any of their respective Subsidiaries to any third party and/or Governmental Entity in connection with the Merger or the other transactions contemplated by this Agreement.

SECTION 5.8. *Further Assurances*. In case at any time after the Effective Time any further action is reasonably necessary to carry out the purposes of this Agreement or the transactions contemplated by this Agreement, the proper officers of the Company, Holdings and the Surviving Corporation shall take any such reasonably necessary action.

SECTION 5.9. *Agreement to Defend and Indemnify*.

(a) If any action, suit, proceeding or investigation relating hereto or to the transactions contemplated hereby is commenced, whether before or after the Effective Time, the parties hereto agree to cooperate and use their best efforts to defend against and respond thereto. It is understood and agreed that, subject to the limitations on indemnification contained in the Missouri BCL and the Restated Articles of Incorporation of the Company, the Company shall, regardless of whether the Merger becomes effective, indemnify and hold harmless, and after the Effective Time, the Surviving Corporation shall indemnify and hold harmless, each director and officer of the Company including, without limitation, officers and directors serving as such on the date hereof (collectively, the "Indemnified Parties") against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement in connection with any claim, action, suit, proceeding or investigation arising out of or pertaining to any of the transactions contemplated hereby, including without limitation, to the extent permitted by law, liabilities arising under the Securities Act or the Exchange Act in connection with the Merger or the Financing, and in the event of any such claim, action, suit, proceeding or investigation (whether arising before or after the Effective Time), (i) the Company or the Surviving Corporation shall pay the reasonable fees and expenses of counsel selected by the Indemnified Parties, which counsel shall be reasonably satisfactory to the Company or the Surviving Corporation, promptly as statements therefor are received and (ii) the Company and the Surviving Corporation will cooperate in the defense of any such matter; *provided*, *however*, that neither the Company nor the Surviving Corporation shall be liable for any settlement effected without its written consent (which consent shall not be unreasonably withheld); and *further*, *provided*, that neither the Company nor the Surviving Corporation shall be obliged pursuant to this *Section 5.9* to pay the fees and disbursements of more than one counsel for all Indemnified Parties in any single action except to the extent that, in the opinion of counsel for the Indemnified Parties, two or more of such Indemnified Parties have an actual conflict of interest in the outcome of such action. For six years after the Effective Time, the Surviving Corporation shall be required to maintain or obtain officers' and directors' liability insurance covering the Indemnified Parties who are currently covered by the Company's officers and directors liability insurance policy on terms not less favorable than those in effect on the date hereof in terms of coverage and amounts; *provided*, *however*, that in no event shall the Surviving Corporation be required to expend more than an amount per year equal to 150% of current annual premiums paid by the Company for such insurance to maintain or procure insurance coverage pursuant hereto, in which case the Surviving Corporation shall provide the maximum coverage that is then available for 150% of such annual

premiums. The Surviving Corporation shall continue in effect the indemnification provisions currently provided by the Restated Articles of Incorporation of the Company for a period of not less than six years following the Effective Time. This *Section 5.9* shall survive the consummation of the Merger. Notwithstanding *Section 8.7*, this *Section 5.9* is intended to be for the benefit of and to grant third-party rights to Indemnified Parties whether or not parties to this Agreement, and each of the Indemnified Parties shall be entitled to enforce the covenants contained herein.

(b) If the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then and in each such case, proper provision shall be made so that the successors and assigns of the Surviving Corporation assume the obligations set forth in this *Section 5.9*.

SECTION 5.10. *Continuation of Employee Benefits*.

(a) From and after the Effective Time, Holdings shall cause the Surviving Corporation and its Subsidiaries to honor in accordance with their terms all existing employment, severance, consulting and salary continuation agreements between the Company and any current or former officer, director, employee or consultant of the Company or group of such officers, directors, employees or consultants described on *Section 5.10* of the Company Disclosure Schedule.

(b) To the extent permitted under any applicable law, each employee of the Company and its Subsidiaries shall be given credit for all service with the Company (or service credited by the Company) under all employee benefit plans, programs policies and arrangements maintained by the Surviving Corporation in which they participate or in which they become participants for purposes of eligibility, vesting and benefit accrual, including for purposes of determining (i) short-term and long-term disability benefits, (ii) severance benefits, (iii) vacation benefits and (iv) benefits under any retirement plan; *provided that* credit need not be given for service to the extent such credit would result in duplication of benefits.

SECTION 5.11. *Financing*.

(a) Merger Sub shall use its reasonable best efforts to obtain the Financing consistent with the terms specified and described in the Commitment Letters delivered to the Company by Merger Sub and otherwise on and subject to terms reasonably acceptable to Merger Sub.

(b) The Company agrees to provide, and will cause its Subsidiaries and its and their respective directors, officers, employees and advisors to provide, all cooperation reasonably necessary in connection with the arrangement of Financing to be consummated contemporaneously with or at or after the expiration of the Effective Time in respect of the transactions contemplated by this Agreement, including participation in meetings, due diligence sessions, road shows, the preparation of offering memoranda, private placement memoranda, prospectuses and similar documents, the execution and delivery of any commitment letters, underwriting or placement agreements, pledge and security documents, other definitive financing documents, or other requested certificates or documents, including a certificate of the chief financial officer of the Company with respect to solvency matters, audited and unaudited financial statements, comfort letters of accountants and legal opinions as may be reasonably requested by Holdings or Merger Sub and taking such other actions as are reasonably required to be taken by the Company in the Commitment Letters. In addition, in conjunction with the obtaining of Financing, the parties hereto agree to cooperate and use all reasonable best efforts to take such actions as may be necessary to prepay, redeem and/or renegotiate the Notes, as reasonably requested by Holdings and Merger Sub including, without limitation, pursuant to the Indenture, to fix August 7, 2006 as the redemption date for the redemption of all Notes issued and outstanding under the Indenture (the "Redemption") as of the Effective Time and to cause to be delivered at the Effective Time to

the Trustee (as defined in the Indenture) a notice of redemption dated May 9, 2006 for delivery to each of the holders of the Notes in connection with the Redemption pursuant to Section 3.2 of the Indenture. In connection with the Redemption, the Company shall, pursuant to Section 13.1 of the Indenture, deposit with the Trustee at the Effective Time funds in an amount sufficient to pay the redemption price under the Indenture with respect to all of the issued and outstanding Notes including principal and premium, if any, and interest, due or to become due to such date of Redemption, and shall use its reasonable best efforts to take all other actions necessary to cause the Indenture to cease to be of further effect pursuant to Section 13.1 of the Indenture. Notwithstanding the foregoing, no call for redemption or prepayment of the Notes shall be irrevocably made until contemporaneously with or after the Effective Time.

SECTION 5.12. *Takeover Statutes.* If any Takeover Statute enacted under state or federal law shall become applicable to the Merger or any of the other transactions contemplated hereby, each of the Company, Holdings and Merger Sub and the Board of Directors of each of the Company, Holdings and Merger Sub shall grant such approvals and take such actions as are necessary so that the Merger and the other transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated hereby and otherwise use reasonable best efforts to eliminate or minimize the effects of such statute or regulation on the Merger and the other transactions contemplated hereby.

SECTION 5.13. *Disposition of Litigation.* In connection with any litigation which may be brought against the Company or its directors relating to the transactions contemplated hereby, the Company shall keep Holdings and Merger Sub, and any counsel which Holdings and Merger Sub may retain at their own expense, informed of the status of such litigation and will provide Holdings' and Merger Sub's counsel the right to participate in the defense of such litigation to the extent Holdings and Merger Sub are not otherwise a party thereto, and the Company shall not enter into any settlement or compromise of any such stockholder litigation without Holdings' and Merger Sub's prior written consent, which consent shall not be unreasonably withheld or delayed.

SECTION 5.14. *Delisting.* Each of the parties agrees to cooperate with each other in taking, or causing to be taken, all actions necessary to delist the Company Common Stock from the NYSE and to terminate registration under the Exchange Act; *provided that* such delisting and termination shall not be effective until after the Effective Time of the Merger.

ARTICLE VI

CONDITIONS OF MERGER

SECTION 6.1. *Conditions to Each Party's Obligation to Effect the Merger.* The respective obligations of each party to effect the Merger shall be subject to the following conditions:

(a) *Shareholder Approval*. The Merger and this Agreement shall have been approved and adopted by the affirmative vote of the shareholders holding at least two-thirds of the outstanding shares of Company Common Stock.

(b) *HSR Act*. The waiting period applicable to the consummation of the Merger under the HSR Act shall have expired or been terminated.

(c) *No Challenge*. No statute, rule, regulation, judgment, writ, decree, order or injunction shall have been promulgated, enacted, entered or enforced, and no other action shall have been taken, by any Governmental Entity that in any of the foregoing cases has the effect of making illegal or directly or indirectly restraining, prohibiting or restricting the consummation of the Merger.

SECTION 6.2. *Additional Conditions to Obligation of the Company to Effect the Merger.* The obligation of the Company to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the additional following conditions, unless waived by the Company:

(a) *Performance of Obligations of Merger Sub*. Holdings and Merger Sub shall have performed in all material respects their agreements contained in this Agreement required to be performed on or prior to the Effective Time and the Company shall have received a certificate of an executive officer of Merger Sub and Holdings to that effect.

(b) *Representations and Warranties of Merger Sub*. The representations and warranties of Holdings and Merger Sub contained in this Agreement shall be true and correct (without giving effect to any "materiality" qualifiers set forth therein) as of the date of this Agreement and at and as of the Effective Time with the same force and effect as if made at and as of the Effective Time (other than those representations and warranties that address matters only as of a particular date or only with respect to a specific period of time, which need only be true and correct as of such date or with respect to such period), except where the failure of such representations and warranties to be true and correct (without giving effect to any "materiality" qualifiers set forth therein) would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of Holdings and Merger Sub to consummate the transactions contemplated hereby.

(c) *Consents*. All consents, authorizations, orders and approvals of (or filings, reports, registrations with or notifications to) any Governmental Entity required in connection with the execution, delivery and performance of this Agreement, the failure to obtain which would prevent the consummation of the Merger, shall have been obtained and shall be in full force and effect.

SECTION 6.3. *Additional Conditions to Obligations of Merger Sub to Effect the Merger.* The obligations of Holdings and Merger Sub to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the additional following conditions, unless waived by Holdings and Merger Sub:

(a) *Performance of Obligations of the Company and its Subsidiaries*. The Company and its Subsidiaries shall have performed in all material respects its agreements contained in this Agreement required to be performed on or prior to the Effective Time, and Holdings and Merger Sub shall have received a certificate of the President or Chief Executive Officer of the Company to that effect.

(b) *Representations and Warranties of the Company and its Subsidiaries*. The representations and warranties of the Company contained in *Section 3.1* (Organization), *Section 3.3* (Capitalization), *Section 3.4* (Authority), *Section 3.7* (Absence of Certain Changes or Events), *Section 3.18* (Brokers), *Section 3.21* (Control Share Acquisition), *Section 3.22* (Rights Agreement), and *Section 3.23* (Vote Required) shall be true and correct in all respects, in each case, as of the date of this Agreement and at and as of the Effective Time with the same force and effect as if made at and as of the Effective Time (other than those representations and warranties that address matters only as of a particular date or only with respect to a specific period of time, which need only be true and correct as of such date or with respect to such period). The representations and warranties of the Company contained in this Agreement (other than those listed in the preceding sentence) shall be true and correct (without giving effect to any "materiality" or "Material Adverse Effect" qualifiers set forth therein) as of the date of this Agreement and at and as of the Effective Time with the same force and effect as if made at and as of the Effective Time (other than those representations and warranties that address matters only as of a particular date or only with respect to a specific period of time, which need only be true and correct as of such date or with respect to such period), except where the failure of such representations and warranties to be true and correct (without giving effect to any "materiality" or "Material Adverse

Effect" qualifiers set forth therein) would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Holdings and Merger Sub shall have received a certificate of the President or Chief Executive Officer of the Company as to the satisfaction of this *Section 6.3(b)*.

(c) *Consents*. The Company shall have obtained and provided to Holdings and Merger Sub copies of evidence with respect to the consents of third parties listed on *Section 3.5(b)* of the Company Disclosure Schedule, the terms of which consents shall be reasonably satisfactory to Holdings and Merger Sub.

(d) *Suits, Actions and Proceedings*. No suit, action, proceeding, claim, inquiry or investigation by any Governmental Entity or any third party shall be pending seeking to prohibit or restrain, or seeking damages in connection with the Merger or the transactions contemplated by this Agreement.

(e) *Options*. From and after the Effective Time, after giving effect to the Merger, there shall be no options or other rights outstanding to acquire shares of Company Common Stock or any equity securities of the Company under the Option Plans or otherwise.

(f) *Approvals*. All notices, applications, approvals, consents, orders, exemptions and waivers ("Approvals") required to be furnished to or obtained from any Governmental Entity, including any Approvals in respect of Permits, necessary in order for the Company and its Subsidiaries to conduct their business following the consummation of the transactions contemplated by this Agreement in substantially the manner presently conducted shall have been obtained or furnished and any applicable waiting period or periods shall have expired or terminated (or, if there be no time limit for waiver or objection, a notice of no objection or equivalent with respect thereto shall have been received by the Company) except where the failure to obtain any such Approvals will not (i) reasonably be expected to result in a Material Adverse Effect, (ii) materially and adversely impact the economic or business benefits to Holdings and Merger Sub of the transactions contemplated hereby or (iii) result in Holdings and the Surviving Corporation and its Subsidiaries being prohibited from conducting, or materially limiting their ability to conduct, business in any jurisdiction in substantially the manner presently conducted; and no such Approval shall impose any condition or conditions relating to, or requiring changes or restrictions in, the operations of any asset or business of Holdings and the Surviving Corporation and its Subsidiaries, which is reasonably likely to result in a Material Adverse Effect or to materially and adversely impact the economic or business benefits to Holdings and the Surviving Corporation and its Subsidiaries of the transactions contemplated by this Agreement.

(g) *Dissenting Shares*. The aggregate number of Dissenting Shares shall be less than 5% of the total number of outstanding shares of Company Common Stock at the Effective Time.

(h) *Resignations*. The Company shall deliver the executed resignation of each director of the Subsidiaries to be effective as of the Effective Time.

(i) *Leased Real Property*. With respect to the Leased Real Property, the Company shall have delivered to Holdings and Merger Sub a written consent for each of the Real Property Leases, in each case whose consent is required under such Real Property Lease in connection with the transactions contemplated in this Agreement, in form and substance reasonably satisfactory to Holdings and Merger Sub.

ARTICLE VII

TERMINATION, AMENDMENT AND WAIVER

SECTION 7.1. *Termination*. This Agreement may be terminated at any time before the Effective Time by:

(a) mutual written consent of the Boards of Directors of Holdings, Merger Sub and the Company; or

(b) either Holdings, Merger Sub or the Company, if a Governmental Entity shall have issued an order, decree or ruling or taken any other action (which order, decree or ruling the parties hereto shall use their reasonable best efforts to lift), in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement, and such order, decree, ruling or other action shall have become final and non-appealable; or

(c) either Holdings, Merger Sub or the Company, if the Company Shareholder Approval shall not have been obtained at the Company Shareholders' Meeting or at any adjournment or postponement thereof; or

(d) Holdings or Merger Sub, if the Merger shall not have been consummated on or before June 30, 2006 (the "Termination Date"); *provided, however*, that the Termination Date shall be automatically extended for a period of 30 days if (i) the condition set forth in Section 6.3(f) has not been satisfied on or prior to the Termination Date and (ii) all other conditions to the consummation of the Merger are satisfied on or prior to the Termination Date or capable of then being satisfied at the Closing (other than the condition in Section 6.3(f)), provided that the right to terminate this Agreement pursuant to this *Section 7.1(d)* shall not be available to Holdings or Merger Sub if any action of Holdings or Merger Sub or the failure of Holdings or Merger Sub to perform any of its obligations under this Agreement or required to be performed at or prior to the Effective Time has been the cause of, or resulted in, the failure of the Effective Time to occur on or before the Termination Date and such action or failure to perform constitutes a material breach of this Agreement; or

(e) the Company, if the Merger shall not have been consummated on or before the Termination Date, provided that the right to terminate this Agreement pursuant to this *Section 7.1(e)* shall not be available to the Company if any action of the Company or the failure of the Company to perform any of its obligations under this Agreement or required to be performed at or prior to the Effective Time has been the cause of, or resulted in, the failure of the Effective Time to occur on or before the Termination Date and such action or failure to perform constitutes a material breach of this Agreement; or

(f) the Company (i) if there shall be a material breach of any of Merger Sub's or Holdings' representations, warranties or covenants hereunder, such that the conditions contained in *Section 6.2(b)* or *Section 6.2(a)* would not be satisfied and such breach is not curable or, if curable, is not cured within 15 days of written notice delivered to Holdings or Merger Sub, provided that the Company shall not have the right to terminate this Agreement pursuant to this *Section 7.1(f)* if the Company is then in material breach of any of its covenants or agreements contained in this Agreement; or (ii) prior to the approval of the Merger by the Company shareholders, for the purpose of entering into a binding written definitive agreement with respect to an unsolicited written proposal or offer for a Superior Proposal, provided that (A) the Company is not in material breach of any of the terms of this Agreement, (B) the Company shall have complied with the provisions of *Sections 4.2* and *4.3*, (C) such binding agreement is entered into concurrently with the exercise of this termination right and (D) the Company shall have paid to Holdings and Merger Sub prior to such termination the Fee and Transaction Expenses described in *Section 7.2(b)* hereto. The Company agrees (x) that it will not enter into a binding agreement referred to

in clause (ii) above until at least the sixth business day after it has provided written notice to Holdings and Merger Sub required by *Section 4.3* and (y) to notify Holdings and Merger Sub if its intention to enter into a written agreement referred to in its notification shall change at any time after giving such notification; or

(g) Holdings or Merger Sub, if there shall be a material breach of any of the Company's representations, warranties or covenants hereunder after the date of this Agreement, such that *Section 6.3(b)* or *Section 6.3(a)* would not be satisfied and such breach is not curable or, if curable, is not cured within 15 days of written notice thereof is delivered to the Company, provided that Holdings or Merger Sub shall not have the right to terminate this Agreement pursuant to this *Section 7.1(g)* if Holdings or Merger Sub is then in material breach of any of its covenants or agreements contained in this Agreement; or

(h) Holdings or Merger Sub, if (i) the Board of Directors shall (A) withdraw or modify or change in a manner adverse to Merger Sub its recommendation or approval in respect of this Agreement and the Merger; *provided that* such time period shall be stayed during the period from when the Company first gives written notice pursuant to *Section 4.3* until two business days after the earlier of Holdings' and Merger Sub's response to such written notice and the fifth business day after Holdings and Merger Sub's receipt of such written notice, or (B) shall have resolved to do any of the foregoing; (ii) the Board of Directors shall have approved or recommended any proposal other than by Holdings and Merger Sub in respect of an Acquisition Proposal or failed to reject and, if applicable, recommend against any such proposal, or shall have resolved to do any of the foregoing, or (iii) the Company shall have entered into an agreement with respect to an Acquisition Proposal.

SECTION 7.2. *Effect of Termination*.

(a) In the event of termination of this Agreement as provided in *Section 7.1*, this Agreement shall forthwith become void and there shall be no liability on the part of Holdings, Merger Sub or the Company, except (i) as set forth in *Sections 5.5(b)*, *7.2(b)* and *8.3* and (ii) nothing herein shall relieve any party from liability for any breach of this Agreement.

(b) (i) If (A) Holdings or Merger Sub shall have terminated this Agreement pursuant to *Section 7.1(h)(i)*, *(ii)* or *(iii);* or (B) the Company shall have terminated this Agreement pursuant to *Section 7.1(f)(ii);* or (C) both (1) this Agreement is terminated pursuant to *Section 7.1(c)* or *Section 7.1(g)* and (2) at any time after the date of this Agreement and at or before the date of such termination a proposal or offer with respect to an Acquisition Proposal shall have been publicly announced or disclosed (whether or not conditional), or disclosed to the Board of Directors or any committee thereof, then, in any such case, the Company shall pay Holdings (x) a termination fee of $10,175,000 (the "Fee") plus (y) an amount, not in excess of $3,000,000, equal to the actual and reasonably documented out-of-pocket expenses of Holdings, Merger Sub and Wellspring incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the consummation of the transactions contemplated hereby and the Financing thereof, including, without limitation, all fees and expenses of financing sources, counsel, accountants, investment bankers, experts, and consultants to Holdings, Merger Sub, Wellspring and their affiliates ("Transaction Expenses"), which Fee and Transaction Expenses shall be paid, in the event of any such termination by the Company, prior to or concurrently with such termination, and, in the event of any such termination by Holdings or Merger Sub, within one business day following such termination, in immediately available funds by wire transfer to such account or accounts as Holdings may designate in writing to the Company (the "Fee Account").

(ii) If (A) this Agreement is terminated pursuant to *Section 7.1(d)* or *Section 7.1(e)* (whether or not the condition in *Section 6.1(a)* shall have been satisfied at the time of such termination), (B) at any time after the date of this Agreement and at or before the date of

such termination a proposal with respect to an Acquisition Proposal shall have been publicly announced or disclosed (whether or not conditional), or disclosed to the Board of Directors or any committee thereof and (C) within twelve months after the date of such termination the Company shall have entered into an agreement with respect to an Acquisition Proposal that provides a higher price to the Company's shareholders, from a financial point of view, than the transactions contemplated by this Agreement, then in any such case the Company shall promptly, but in no event later than one business day after the execution of such agreement with respect to such Acquisition Proposal, pay Holdings the Fee plus the Transaction Expenses, which amounts shall be payable by wire transfer to the Fee Account.

ARTICLE VIII

GENERAL PROVISIONS

SECTION 8.1. *Non-Survival of Representations, Warranties and Agreements.* The representations, warranties and agreements in this Agreement shall terminate at the Effective Time or the termination of this Agreement pursuant to *Section 7.1*, as the case may be, except that the agreements set forth in *Article I* and *Section 5.8* and *Section 5.9* shall survive the Effective Time indefinitely and those set forth in *Sections 5.5(b)*, *7.2(b)* and *8.3* shall survive termination indefinitely.

SECTION 8.2. *Notices.* All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made (i) as of the date delivered or sent by facsimile if delivered personally or by facsimile and (ii) on the third business day after deposit in the U.S. mail, if mailed by registered or certified mail (postage prepaid, return receipt requested), in each case to the parties at the following addresses (or at such other address for a party as shall be specified by like notice, except that notices of changes of address shall be effective upon receipt):

(a) if to Holdings or Merger Sub, to:

c/o Wellspring Capital Management LLC
Lever House
390 Park Avenue
New York, New York 10022-4608
Attention: Greg S. Feldman, Managing Partner
Telephone: (212) 318-9898
Facsimile: (212) 318-9810

With copies, which shall not serve as a notice, to:

Skadden, Arps, Slate, Meagher & Flom LLP
4 Times Square
New York, New York 10036-6522
Attention: William S. Rubenstein, Esq.
Telephone: (212) 735-3000
Facsimile: (212) 735-2000

and

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
P.O. Box 636
Wilmington, Delaware 19899-0636
Attention: Allison Land Amorison, Esq.
Telephone: (302) 651-3180
Facsimile: (302) 651-3001

(b) if to the Company, to:

Dave & Buster's, Inc.
2481 Manana Drive
Dallas, Texas 75220

Attention: James W. Corley
Telephone: (214) 357-9588
Facsimile: (214) 357-1536

With a copy, which shall not serve as a notice, to:

Hallett & Perrin
2001 Bryan Street, Suite 3900
Dallas, Texas 75201
Attention: Bruce H. Hallett and Lance M. Hardenburg
Telephone: (214) 953-0053
Facsimile: (214) 922-4170

SECTION 8.3. *Expenses.* Except as expressly set forth in *Section 7.2(b)*, all fees, costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such fees, costs and expenses.

SECTION 8.4. *Definitions.* For purposes of this Agreement, the term:

"Acquisition Proposal" shall have the meaning set forth in *Section 4.2*.

"affiliate" shall have the meaning set forth in *Section 1.7(f)(i)*.

"Affiliate Transaction" shall have the meaning set forth in *Section 3.28(a)*.

"Agreement" shall have the meaning set forth in the Preamble.

"Approvals" shall have the meaning set forth in *Section 6.3(f)*.

"Board of Directors" shall have the meaning set forth in the Recitals.

"Certificates" shall have the meaning set forth in *Section 1.7(b)*.

"Cleanup" shall mean all actions required to: (i) clean up, remove, treat or remediate Hazardous Materials in the indoor or outdoor environment; (ii) prevent the Release of Hazardous Materials so that they do not migrate, endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (iii) perform pre-remedial studies and investigations and post-remedial monitoring and care; or (iv) respond to any government requests for information or documents in any way relating to cleanup, removal, treatment or remediation or potential cleanup, removal, treatment or remediation of Hazardous Materials in the indoor or outdoor environment.

"Closing" shall have the meaning set forth in *Section 1.9*.

"Closing Date" shall have the meaning set forth in *Section 1.9*.

"Code" shall have the meaning set forth in *Section 1.7(h)*.

"Commitment Letters" shall have the meaning set forth in *Section 2.5*.

"Company" shall have the meaning set forth in the Preamble.

"Company 2004 Form 10-K" shall have the meaning set forth in *Section 3.6(c)*.

"Company Common Stock" shall have the meaning set forth in *Section 1.6*.

"Company Disclosure Schedule" shall have the meaning set forth in *Article III*.

"Company Material Contracts" shall have the meaning set forth in *Section 3.17(a)*.

"Company Preferred Stock" shall have the meaning set forth in *Section 3.3*.

"Company Shareholder Approval" shall have the meaning set forth in *Section 3.23*.

"Company Shareholders' Meeting" shall have the meaning set forth in *Section 2.8*.

"Confidentiality Agreement" shall mean the Confidentiality Agreement, dated November 17, 2005, by and between the Company and Wellspring.

"Construction Projects" shall have the meaning set forth in *Section 3.15(g)*.

"control", "controlled by" or "under common control with" shall have the meaning set forth in *Section 1.7(f)(ii)*.

"Copyrights" shall have the meaning set forth in *Section 3.16(e)*.

"Credit Agreement" shall mean the Amended and Restated Revolving Credit and Term Loan Agreement dated November 1, 2004, by and among the Company and its subsidiaries, Bank of America NA and the financial institutions named therein.

"Debt Financing" shall have the meaning set forth in *Section 2.5*.

"Dissenting Shares" shall have the meaning set forth in *Section 1.6(d)*.

"Draft 10-Q" shall have the meaning set forth in *Section 3.6(e)*.

"Effective Time" shall have the meaning set forth in *Section 1.2*.

"Employee Plans" shall have the meaning set forth in *Section 3.9*.

"Environmental Claim" shall mean any claim, action, cause of action, investigation or notice (written or oral) by any Person alleging potential liability (including, without limitation, potential liability for investigatory costs, Cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (i) the presence, or Release, of any Hazardous Materials at any location, whether or not owned or operated by the Company or any of its Subsidiaries, or (ii) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

"Environmental Laws" shall mean all federal, state, local and foreign laws and regulations relating to pollution or protection of the environment, including without limitation, laws relating to Releases or threatened Releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, disposal, transport or handling of Hazardous Materials and all laws and regulations with regard to record keeping, notification, disclosure and reporting requirements respecting Hazardous Materials.

"Equity Financing" shall have the meaning set forth in *Section 2.5*.

"ERISA" shall have the meaning set forth in *Section 3.9*.

"ERISA Affiliate" shall have the meaning set forth in *Section 3.9*.

"Exchange Act" shall have the meaning set forth in *Section 2.4(b)*.

"Exchange Agent" shall have the meaning set forth in *Section 1.7(a)*.

"Exchange Fund" shall have the meaning set forth in *Section 1.7(a)*.

"Fee" shall have the meaning set forth in *Section 7.2(b)(i)*.

"Fee Account" shall have the meaning set forth in *Section 7.2(b)(i)*.

"Financing" shall have the meaning set forth in *Section 2.5*.

"Financing Sources" shall have the meaning set forth in *Section 5.5(a)*.

"GAAP" shall mean United States generally accepted principles and practices as in effect from time to time and applied consistently throughout the periods involved.

"Governmental Entity" shall have the meaning set forth in *Section 2.8*.

"Hazardous Materials" shall mean all substances defined as Hazardous Substances, Oils, Pollutants or Contaminants in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.5, or defined as such by, or regulated as such under, any Environmental Law.

"Holdings" shall have the meaning set forth in the Preamble.

"Holdings Schedule" shall have the meaning set forth in Article II.

"HSR Act" shall have the meaning set forth in *Section 2.4(b)*.

"Indemnified Parties" shall have the meaning set forth in *Section 5.9(a)*.

"Indenture" shall mean the Indenture dated as of August 7, 2003 between Dave & Buster's, Inc. and The Bank of New York, as Trustee, providing for the 5.0% Convertible Subordinated Notes due 2008.

"Insurance Policies" shall have the meaning set forth in *Section 3.24*.

"Intellectual Property Rights" shall have the meaning set forth in *Section 3.16(e)*.

"Joint Venture" shall have the meaning set forth in *Section 3.2(b)*.

"Leased Real Property" shall have the meaning set forth in *Section 3.14(c)*.

"Liens" shall have the meaning set forth in *Section 2.2*.

"Material Adverse Effect" shall have the meaning set forth in *Section 3.1*.

"Merger" shall have the meaning set forth in the Recitals.

"Merger Consideration" shall have the meaning set forth in *Section 1.6(a)(i)*.

"Merger Sub" shall have the meaning set forth in the Preamble.

"Merger Sub Common Stock" shall have the meaning set forth in *Section 1.6*.

"Merger Sub Representatives" shall have the meaning set forth in *Section 5.5(b)*.

"Missouri BCL" shall have the meaning set forth in the Recitals.

"New Warrants" shall have the meaning set forth in *Section 1.6(a)(ii)*.

"Notes" shall have the meaning set forth in *Section 3.3*.

"Option Plans" shall have the meaning set forth in *Section 1.8(a)*.

"Options" shall have the meaning set forth in *Section 1.8(a)*.

"Owned Real Property" shall have the meaning set forth in *Section 3.14(b*).

"Patents" shall have the meaning set forth in *Section 3.16(e)*.

"Permits" shall have the meaning set forth in *Section 3.11*.

"Permitted Liens" shall have the meaning set forth in *Section 3.14(d)*.

"Person" shall mean any individual, partnership, association, joint venture, corporation, business, trust, joint stock company, limited liability company, special purpose vehicle, any unincorporated organization, any other entity, a "group" of such persons, as that term is defined in Rule 13d-5(b) under the Exchange Act, or a Governmental Entity.

"Proxy Statement" shall have the meaning set forth in *Section 2.8*.

"Real Property" shall have the meaning set forth in *Section 3.14(e)*.

"Real Property Leases" shall have the meaning set forth in *Section 3.14(f)*.

"Redemption" shall have the meaning set forth in *Section 5.11(b)*.

"Regulatory Laws" shall have the meaning set forth in *Section 2.4(b)*.

"Release" shall mean any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, dispersal, leaching or migration into the indoor or outdoor environment (including, without limitation, ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

"Required Approvals" shall have the meaning set forth in *Section 5.7*.

"Restricted Stock" shall have the meaning set forth in *Section 3.3*.

"Sarbanes-Oxley" shall have the meaning set forth in *Section 3.6(d)*.

"SEC" shall mean the United States Securities and Exchange Commission or any other Governmental Entity administering the Securities Act and the Exchange Act.

"SEC Reports" shall have the meaning set forth in *Section 3.6(a)*.

"Securities Act" shall have the meaning set forth in *Section 2.4(b)*.

"Significant Subsidiary" shall have the meaning set forth in *Section 4.2*.

"Software" shall have the meaning set forth in *Section 3.16(e)*.

"Structure" shall have the meaning set forth in *Section 3.15(a)*.

"Subsidiary" shall have the meaning set forth in *Section 3.2(a)*.

"Sugarloaf" shall have the meaning set forth in *Section 3.2(a)*.

"Sugarloaf Interest" shall have the meaning set forth in *Section 3.2(a)*.

"Superior Proposal" shall have the meaning set forth in *Section 4.2*.

"Surviving Corporation" shall have the meaning set forth in *Section 1.1*.

"Takeover Statute" shall have the meaning set forth in *Section 3.21*.

"Tango" shall have the meaning set forth in *Section 3.2(a)*.

"Tax Return" shall mean any return, report, information return or other document (including any related or supporting information and, where applicable, profit and loss accounts and balance sheets) with respect to Taxes.

"Taxes" shall mean (i) all taxes, charges, fees, levies or other assessments imposed by any United States Federal, state, or local taxing authority or by any non-U.S. taxing authority, including but not limited to, income, gross receipts, excise, property, sales, use, transfer, payroll, license, ad valorem, liquor, value added, withholding, social security, national insurance (or other similar contributions or payments) franchise, estimated, severance, stamp, and other taxes; (ii) all interest, fines, penalties or

additions attributable to or in respect of any items described in clause (i); and (iii) any transferee liability in respect of any items described in clauses (i) or (ii) payable by reason of contract, assumption, transferee liability, operation of Law, Treasury Regulation 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under Law) or otherwise.

"Termination Date" shall have the meaning set forth in *Section 7.1(d)*.

"Trademarks" shall have the meaning set forth in *Section 3.16(e)*.

"Transaction Expenses" shall have the meaning set forth in *Section 7.2(b)(i)*.

"Treasury Regulations" means the regulations, including temporary regulations, promulgated under the Code, as the same may be amended hereafter from time to time (including corresponding provisions of succeeding regulations).

"Voting Agreement" shall have the meaning set forth in the Recitals.

"Voting Group" shall have the meaning set forth in the Recitals.

"WARN Act" shall have the meaning set forth in *Section 3.26*.

"Warrant Consideration" shall have the meaning set forth in *Section 1.6(a)(ii)*.

"Warrants" shall have the meaning set forth in *Section 1.6(a)(ii)*.

"Wellspring" shall have the meaning set forth in *Section 2.5*.

SECTION 8.5. *Headings.* The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 8.6. *Severability.* If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the maximum extent possible.

SECTION 8.7. *Entire Agreement; No Third-Party Beneficiaries.* This Agreement, the Disclosure Schedules and the Confidentiality Agreement constitute the entire agreement and supersede any and all other prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof and, except as otherwise expressly provided herein (including *Section 5.9* but expressly excluding *Section 5.10*), this Agreement is not intended to confer upon any other Person any rights or remedies hereunder, except that Wellspring shall be a beneficiary of *Section 7.2(b)*(solely with respect to the right to receive the Transaction Expenses) and shall be entitled to enforce such provisions.

SECTION 8.8. *Assignment.* This Agreement shall not be assigned by operation of law or otherwise, except that Merger Sub may assign all or any of its rights hereunder to any affiliate of Merger Sub provided that no such assignment shall relieve the assigning party of its obligations hereunder.

SECTION 8.9. *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of Missouri applicable to contracts executed in and to be performed entirely within that State.

SECTION 8.10. *Amendment.* This Agreement may be amended by the parties hereto by action taken by Merger Sub, Holdings, and by action taken by or on behalf of the Board of Directors at any

time before the Effective Time; *provided, however*, that, after approval of the Merger by the shareholders of the Company, no amendment may be made which would reduce the amount or change the type of consideration into which each share of Company Common Stock will be converted upon consummation of the Merger. This Agreement may not be amended except by an instrument in writing signed by the parties hereto.

SECTION 8.11. *Waiver.* At any time before the Effective Time, any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only as against such party and only if set forth in an instrument in writing signed by such party. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

SECTION 8.12. *Counterparts.* This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which shall constitute one and the same agreement.

SECTION 8.13. *Waiver of Jury Trial.* EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) EACH SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) EACH SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) EACH SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.13.

SECTION 8.14. *Interpretation*.

(a) The parties acknowledge and agree that they may pursue judicial remedies at law or equity in the event of a dispute with respect to the interpretation or construction of this Agreement. In the event that an alternative dispute resolution procedure is provided for in any other agreement contemplated hereby, and there is a dispute with respect to the construction or interpretation of such agreement, the dispute resolution procedure provided for in such agreement shall be the procedure that shall apply with respect to the resolution of such dispute.

(b) The table of contents is for convenience of reference only, does not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof. Where a reference in this Agreement is made to an Article, Section, Exhibit or Schedule, such reference shall be to an Article, Section of or Exhibit or Schedule to this Agreement unless otherwise indicated. For purposes of this Agreement, the words "hereof," "herein," "hereby" and other words of similar import refer to this Agreement as a whole unless otherwise indicated.

Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." Whenever the singular is used herein, the same shall include the plural, and whenever the plural is used herein, the same shall include the singular, where appropriate.

(c) No provision of this Agreement will be interpreted in favor of, or against, either party hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

SECTION 8.15. *Disclosure Generally.* All of the Company Disclosure Schedule and Holdings Schedule are incorporated herein and expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement herein or in any section of the Company Disclosure Schedule or Holdings Schedule shall be deemed to refer to this entire Agreement, including all sections of the Company Disclosure Schedule and Holdings Schedule; *provided*, *however*, that information furnished in any particular section of the Company Disclosure Schedule or Holdings Schedule shall be deemed to be included in another section of the Company Disclosure Schedule or Holdings Schedule, respectively, only to the extent a matter in such section of the Company Disclosure Schedule or Holdings Schedule is disclosed in such a way as to make its relevance to the information called for by such other section of this Agreement reasonably apparent on its face.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the Company, Merger Sub and Holdings has caused this Agreement to be duly executed and delivered by its respective duly authorized officer, all as of the date first above written.

DAVE & BUSTER'S, INC.

By: _____

Name:
Title:

WS MIDWAY ACQUISITION SUB, INC.

By: _____

Name:
Title:

WS MIDWAY HOLDINGS, INC.

By: _____

Name:
Title:

QuickLinks

Exhibit 3.1

ARTICLES OF INCORPORATION

OF

WS MIDWAY ACQUISITION SUB, INC.

FIRST: The name of the Corporation is WS Midway Acquisition Sub, Inc. (hereinafter the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Missouri is 120 South Central Avenue, Clayton, Missouri 63105. The name of its registered agent at that address is C T Corporation System.

THIRD: The purpose of the Corporation is to own, operate and develop restaurant and/or entertainment facilities and to engage in any other lawful act or activity for which a corporation may be organized under the General and Business Corporation Law of the State of Missouri as set forth in Chapter 351 of the Missouri Revised Statutes (the "GBCL").

FOURTH: The duration of the Corporation is perpetual.

FIFTH: The total number of shares of stock which the Corporation shall have authority to issue is 1,000 shares of Common Stock, each having a par value of $.01.

SIXTH: The name and mailing address of the Sole Incorporator is as follows:

Name	Address
Mary E. Keogh	One Rodney Square Wilmington, Delaware 19899

SEVENTH: The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

(1) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

(2) The directors shall have concurrent power with the stockholders to make, alter, amend, change, add to or repeal the By-Laws of the Corporation.

(3) The number of directors of the Corporation shall be as from time to time fixed by, or in the manner provided in, the By-Laws of the Corporation. Election of directors need not be by written ballot unless the By-Laws so provide.

(4) No director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 351.345 of the GBCL or (iv) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this Article SEVENTH by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

(5) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the GBCL, these Articles of Incorporation, and any By-Laws adopted by the stockholders; provided, however, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

(6) Stockholders shall have the power and authority to act by written consent in lieu of meeting. Any such actions by written consent shall be taken pursuant to the procedures set forth in the By-Laws.

EIGHTH: The Corporation shall indemnify its directors and officers to the fullest extent authorized or permitted by law, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of his or her heirs, executors and personal and legal representatives; *provided*, *however*, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors. The right to indemnification conferred by this Article EIGHTH shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition.

The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article EIGHTH to directors and officers of the Corporation.

The rights to indemnification and to the advance of expenses conferred in this Article EIGHTH shall not be exclusive of any other right which any person may have or hereafter acquire under these Articles of Incorporation, the By-Laws of the Corporation, any statute, agreement, vote of stockholders or disinterested directors or otherwise.

Any repeal or modification of this Article EIGHTH by the stockholders of the Corporation shall not adversely affect any rights to indemnification and to the advancement of expenses of a director or officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

NINTH: Meetings of stockholders may be held within or without the State of Missouri, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the GBCL) outside the State of Missouri at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

TENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

[SIGNATURE PAGE FOLLOWS]

I, THE UNDERSIGNED, being the Sole Incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the GBCL, do make these Articles, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 7th day of December, 2005.

Mary E. Keogh
Sole Incorporator

Exhibit 3.2

BY-LAWS

OF

WS MIDWAY ACQUISITION SUB, INC.

A Missouri Corporation

Effective December 8, 2005

TABLE OF CONTENTS

BY-LAWS

OF

WS MIDWAY ACQUISITION SUB, INC.

(hereinafter called the "Corporation")

ARTICLE I

OFFICES

Section 1. *Registered Office.* The registered office of the Corporation shall be in the City of Jefferson City, County of Cole, State of Missouri.

Section 2. *Other Offices.* The Corporation may also have offices at such other places, both within and without the State of Missouri, as the Board of Directors may from time to time determine.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. *Place of Meetings.* Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Missouri, as shall be designated from time to time by the Board of Directors.

Section 2. *Annual Meetings.* The Annual Meeting of Stockholders for the election of directors shall be held at the hour of 10 o'clock a.m. on the second Tuesday of June of each year. If the day fixed for the Annual Meeting shall be a legal holiday in the place designated for the meeting, such meeting shall be held on the next succeeding business day. Any other proper business may be transacted at the Annual Meeting of Stockholders.

Section 3. *Special Meetings.* Unless otherwise required by law or by the articles of incorporation of the Corporation, as amended and restated from time to time (the "Articles of Incorporation"), Special Meetings of Stockholders, for any purpose or purposes, may be called by either (i) the Chairman, if there be one, or (ii) the President, (iii) any Vice President, if there be one, (iv) the Secretary or (v) any Assistant Secretary, if there be one, and shall be called by any such officer at the request in writing of (i) the Board of Directors, (ii) a committee of the Board of Directors that has been duly designated by the Board of Directors and whose powers and authority include the power to call such meetings or (iii) stockholders owning a majority of the capital stock of the Corporation issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting. At a Special Meeting of Stockholders, only such business shall be conducted as shall be specified in the notice of meeting (or any supplement thereto).

Section 4. *Notice.* Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a Special Meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law, written notice of any meeting shall be given not less than ten (10) nor more than seventy (70) days before the date of the meeting to each stockholder entitled to notice of and to vote at such meeting.

Section 5. *Adjournments.* Any meeting of the stockholders may be adjourned from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been

transacted at the original meeting. If the adjournment is for more than ninety (90) days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting in accordance with the requirements of Section 4 hereof shall be given to each stockholder of record entitled to notice of and to vote at the meeting.

Section 6. *Quorum.* Unless otherwise required by applicable law or the Articles of Incorporation, the holders of a majority of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, in the manner provided in Section 5 hereof, until a quorum shall be present or represented.

Section 7. *Voting.* Unless otherwise required by law, the Articles of Incorporation or these By-Laws, any question brought before any meeting of the stockholders, other than the election of directors, shall be decided by the vote of the holders of a majority of the total number of votes of the Corporation's capital stock represented and entitled to vote thereat, voting as a single class. Unless otherwise provided in the Articles of Incorporation, and subject to Section 11 of this Article II, each stockholder represented at a meeting of the stockholders shall be entitled to cast one (1) vote for each share of the capital stock entitled to vote thereat held by such stockholder. Such votes may be cast in person or by proxy as provided in Section 8 of this Article II. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of the stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Section 8. *Proxies.* Each stockholder entitled to vote at a meeting of the stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder as proxy, but no such proxy shall be voted upon after eleven (11) months from its date, unless such proxy provides for a longer period. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, the following shall constitute a valid means by which a stockholder may grant such authority:

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram or cablegram to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such telegram or cablegram, provided that any such telegram or cablegram must either set forth or be submitted with information from which it can be determined that the telegram or cablegram was authorized by the stockholder. If it is determined that such telegrams or cablegrams are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information on which they relied.

Any copy, facsimile telecommunication or other reliable reproduction of the writing, telegram or cablegram authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing, telegram or cablegram for any and all purposes for which the original writing, telegram or cablegram could be used; provided, however, that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing, telegram or cablegram.

Section 9. *Consent of Stockholders in Lieu of Meeting.* Unless otherwise provided in the Articles of Incorporation, any action required or permitted to be taken at any Annual or Special Meeting of Stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Such consents shall have the same force and effect as a unanimous vote of the shareholders at a meeting duly held, and may be stated as such in any certificate or document filed under the General and Business Corporation Law of the State of Missouri. The Secretary shall file such consents with the minutes of the meetings of the shareholders.

Section 10. *List of Stockholders Entitled to Vote.* The officer of the Corporation who has charge of the transfer books of the Corporation shall prepare and make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be kept on file at the registered office of the Corporation and shall be open to the examination and inspection of any stockholder, during ordinary business hours, for a period of at least ten (10) days prior to the meeting. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 11. *Record Date.* In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not be more than seventy (70) days before the date of such meeting. If the Board of Directors does not set a record date for the determination of the shareholders entitled to notice of, and to vote at, a meeting of shareholders, only the shareholders who are shareholders of record at the close of business on the twentieth day preceding the date of the meeting shall be entitled to notice of, and to vote at, the meeting, and any adjournment or postponement thereof, except as otherwise provided by statute.

Section 12. *Transfer Books/Stock Ledger.* The transfer books or stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 10 of this Article II or the transfer books of the Corporation, or to vote in person or by proxy at any meeting of the stockholders.

Section 13. *Conduct of Meetings.* The Board of Directors of the Corporation may adopt by resolution such rules and regulations for the conduct of any meeting of the stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allotted to questions or comments by participants.

ARTICLE III

DIRECTORS

Section 1. *Number and Election of Directors.* The Board of Directors shall consist of not less than one nor more than fifteen members, the exact number of which shall initially be fixed at two (2) and thereafter from time to time by the Board of Directors. Except as provided in Section 2 of this Article III, directors shall be elected by a plurality of the votes cast at each Annual Meeting of Stockholders and each director so elected shall hold office until the next Annual Meeting of Stockholders and until such director's successor is duly elected and qualified, or until such director's earlier death or removal. Directors need not be stockholders.

Section 2. *Vacancies.* Unless otherwise required by law or the Articles of Incorporation, vacancies arising through death, resignation, removal, an increase in the number of directors or otherwise may be filled only by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and qualified, or until their earlier death, resignation or removal.

Section 3. *Duties and Powers.* The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Articles of Incorporation or by these By-Laws required to be exercised or done by the stockholders.

Section 4. *Meetings.* The Board of Directors may hold meetings, both regular and special, either within or without the State of Missouri. Regular meetings of the Board of Directors may be held without notice at such time and at such place as may from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the Chairman, if there be one, the President, or by any director. Notice thereof stating the place, date and hour of the meeting shall be given to each director either by mail not less than forty-eight (48) hours before the date of the meeting, by telephone or telegram on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 5. *Organization.* At each meeting of the Board of Directors, the Chairman of the Board of Directors, or, in his or her absence, a director chosen by a majority of the directors present, shall act as chairman. The Secretary of the Corporation shall act as secretary at each meeting of the Board of Directors. In case the Secretary shall be absent from any meeting of the Board of Directors, an Assistant Secretary shall perform the duties of secretary at such meeting; and in the absence from any such meeting of the Secretary and all the Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 6. *Removals of Directors.* Except as otherwise required by applicable law and subject to the rights, if any, of the holders of shares of preferred stock then outstanding, any director or the entire Board of Directors may be removed from office at any time by the affirmative vote of the holders of at least a majority in voting power of the issued and outstanding capital stock of the Corporation entitled to vote in the election of directors.

Section 7. *Quorum.* Except as otherwise required by law or the Articles of Incorporation, at all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

Section 8. *Actions of the Board by Written Consent.* Unless otherwise provided in the Articles of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all the members of the Board of Directors or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

Section 9. *Meetings by Means of Conference Telephone.* Unless otherwise provided in the Articles of Incorporation or these By-Laws, members of the Board of Directors of the Corporation, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 9 shall constitute presence in person at such meeting.

Section 10. *Committees.* The Board of Directors may designate one or more committees, each committee to consist of two or more of the directors of the Corporation. Any committee, to the extent permitted by law and provided in the resolution establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Each committee shall keep regular minutes and report to the Board of Directors when required.

Section 11. *Compensation.* The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary for service as director, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefore. Members of special or standing committees may be allowed like compensation for service as committee members.

Section 12. *Interested Directors.* No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because any such director's or officer's vote is counted for such purpose if: (i) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE IV

OFFICERS

Section 1. *General.* The officers of the Corporation shall be chosen by the Board of Directors and shall be a President, a Secretary and a Treasurer. The Board of Directors, in its discretion, also may choose a Chairman of the Board of Directors (who must be a director) and one or more Vice

Presidents, Assistant Secretaries, Assistant Treasurers and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Articles of Incorporation or these By-Laws. The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chairman of the Board of Directors, need such officers be directors of the Corporation.

Section 2. *Election.* The Board of Directors, at its first meeting held after each Annual Meeting of Stockholders (or action by written consent of stockholders in lieu of the Annual Meeting of Stockholders), shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and each officer of the Corporation shall hold office until such officer's successor is elected and qualified, or until such officer's earlier death, resignation or removal. Any officer elected by the Board of Directors may be removed at any time by the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. The salaries of all officers of the Corporation shall be fixed by the Board of Directors.

Section 3. *Voting Securities Owned by the Corporation.* Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the President or any Vice President or any other officer authorized to do so by the Board of Directors and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

Section 4. *Chairman of the Board of Directors.* The Chairman of the Board of Directors, if there be one, shall preside at all meetings of the stockholders and of the Board of Directors. The Chairman of the Board of Directors shall be the Chief Executive Officer of the Corporation, unless the Board of Directors designates the President as the Chief Executive Officer, in which case, the Chairman of the Board of Directors shall have the powers of the Chief Executive Officer coextensively with the President, and the Chairman of the Board of Directors shall possess the same power as the President to sign all contracts, certificates and other instruments of the Corporation which may be authorized by the Board of Directors. During the absence or disability of the President, the Chairman of the Board of Directors shall exercise all the powers and discharge all the duties of the President. The Chairman of the Board of Directors shall also perform such other duties and may exercise such other powers as may from time to time be assigned by these By-Laws or by the Board of Directors.

Section 5. *President.* The President shall, subject to the control of the Board of Directors and, if there be one, the Chairman of the Board of Directors, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these By-Laws, the Board of Directors or the President. In the absence or disability of the Chairman of the Board of Directors, or if there be none, the President shall preside at all meetings of the stockholders and, provided the President is also a director, the Board of Directors. If there be no Chairman of the Board of Directors, or if the Board of Directors shall otherwise designate, the President shall be the Chief Executive Officer of the Corporation. The President shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these By-Laws or by the Board of Directors.

Section 6. *Vice Presidents.* At the request of the President or in the President's absence or in the event of the President's inability or refusal to act (and if there be no Chairman of the Board of Directors), the Vice President, or the Vice Presidents if there are more than one (in the order designated by the Board of Directors), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Each Vice President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe. If there be no Chairman of the Board of Directors and no Vice President, the Board of Directors shall designate the officer of the Corporation who, in the absence of the President or in the event of the inability or refusal of the President to act, shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 7. *Secretary.* The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for committees of the Board of Directors when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, the Chairman of the Board of Directors or the President, under whose supervision the Secretary shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, and if there be no Assistant Secretary, then either the Board of Directors or the President may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest to the affixing by such officer's signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 8. *Treasurer.* The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of the Treasurer and for the restoration to the Corporation, in case of the Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Treasurer's possession or under the Treasurer's control belonging to the Corporation.

Section 9. *Other Officers.* Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

ARTICLE V

STOCK

Section 1. *Form of Certificates.* Every holder of stock in the Corporation shall be entitled to have a certificate signed by, or in the name of the Corporation (i) by the President or a Vice President and (ii) by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation and sealed with the seal of the Corporation, certifying the number of shares owned by such stockholder in the Corporation.

Section 2. *Signatures.* Any or all of the signatures on a certificate may be a facsimile and the seal of the Corporation may be a facsimile, engraved, or printed. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 3. *Lost Certificates.* The Board of Directors may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or such owner's legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate.

Section 4. *Transfers.* Stock of the Corporation shall be transferable in the manner prescribed by applicable law and in these By-Laws. Transfers of stock shall be made on the books of the Corporation only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefore, properly endorsed for transfer and payment of all necessary transfer taxes; provided, however, that such surrender and endorsement or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. Every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or Assistant Secretary of the Corporation or the transfer agent thereof. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 5. *Dividend Record Date.* In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall be not more than seventy (70) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 6. *Record Owners.* The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 7. *Transfer and Registry Agents.* The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board of Directors.

ARTICLE VI

NOTICES

Section 1. *Notices.* Whenever written notice is required by law, the Articles of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at such person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Written notice may also be given personally or by telegram, telex or cable.

Section 2. *Waivers of Notice.* Whenever any notice is required by applicable law, the Articles of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting, present in person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any Annual or Special Meeting of Stockholders or any regular or special meeting of the directors or members of a committee of directors need be specified in any written waiver of notice unless so required by law, the Articles of Incorporation or these By-Laws.

ARTICLE VII

GENERAL PROVISIONS

Section 1. *Dividends.* Dividends upon the capital stock of the Corporation, subject to the requirements of the General and Business Corporation Law of the State of Missouri and the provisions of the Articles of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting of the Board of Directors (or any action by written consent in lieu thereof in accordance with Section 8 of Article III hereof), and may be paid in cash, in property, or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 2. *Disbursements.* All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 3. *Fiscal Year.* The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 4. *Corporate Seal.* The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Missouri". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE VIII

INDEMNIFICATION

Section 1. *Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation.* Subject to Section 3 of this Article VIII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

Section 2. *Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation.* Subject to Section 3 of this Article VIII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Section 3. *Authorization of Indemnification.* Any indemnification under this Article VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, by the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action, suit, or proceeding, or if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by the shareholders. Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and

reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

Section 4. *Good Faith Defined.* For purposes of any determination under Section 3 of this Article VIII, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The provisions of this Section 4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be.

Section 5. *Indemnification by a Court.* Notwithstanding any contrary determination in the specific case under Section 3 of this Article VIII, and notwithstanding the absence of any determination thereunder, any director or officer may apply to any court of competent jurisdiction in the State of Missouri for indemnification to the extent otherwise permissible under Section 1 or Section 2 of this Article VIII. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be. Neither a contrary determination in the specific case under Section 3 of this Article VIII nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 5 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

Section 6. *Expenses Payable in Advance.* Expenses (including attorneys' fees) incurred by a director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VIII. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

Section 7. *Nonexclusivity of Indemnification and Advancement of Expenses.* The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Articles of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Section 1 and Section 2 of this Article VIII shall be made to the fullest extent permitted by law. The provisions of this Article VIII shall not be deemed to preclude the indemnification of any person who is not specified in Section 1 or Section 2 of this Article VIII but whom the Corporation has the power or obligation to indemnify under the provisions of the General and Business Corporation Law of the State of Missouri, or otherwise.

Section 8. *Insurance.* The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article VIII.

Section 9. *Certain Definitions.* For purposes of this Article VIII, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. The term "another enterprise" as used in this Article VIII shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. For purposes of this Article VIII, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VIII.

Section 10. *Survival of Indemnification and Advancement of Expenses.* The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 11. *Limitation on Indemnification.* Notwithstanding anything contained in this Article VIII to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 5 of this Article VIII), the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors of the Corporation.

Section 12. *Indemnification of Employees and Agents.* The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article VIII to directors and officers of the Corporation.

ARTICLE IX

AMENDMENTS

Section 1. *Amendments.* These By-Laws may be altered, amended or repealed, in whole or in part, or new By-Laws may be adopted by the stockholders or by the Board of Directors; provided, however, that notice of such alteration, amendment, repeal or adoption of new By-Laws be contained

in the notice of such meeting of the stockholders or Board of Directors, as the case may be. All such amendments must be approved by either the holders of a majority of the outstanding capital stock entitled to vote thereon or by a majority of the entire Board of Directors then in office.

Section 2. *Entire Board of Directors.* As used in this Article IX and in these By-Laws generally, the term "entire Board of Directors" means the total number of directors which the Corporation would have if there were no vacancies.

* * *

Adopted as of December 8, 2005

Exhibit 4.1

DAVE AND BUSTER'S, INC.,

THE GUARANTORS PARTIES HERETO,

AND

THE BANK OF NEW YORK TRUST COMPANY, N.A.,

as Trustee

$11^{1}/_{4}$% Senior Notes due 2014

INDENTURE

Dated as of March 8, 2006

CROSS-REFERENCE TABLE

TIA Section	Indenture Section
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.10
(b)	7.3; 7.8; 7.10
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.5
(b)	11.3
(c)	11.3
313(a)	7.6
(b)(1)	N.A.
(b)(2)	7.6
(c)	7.6
(d)	7.6
314(a)	3.2; 11.5
(b)	N.A.
(c)(1)	11.4
(c)(2)	11.4
(c)(3)	N.A.
(d)	N.A.
(e)	11.5
(f)	N.A.
315(a)	7.1
(b)	7.5; 11.2
(c)	7.1
(d)	7.1
(e)	6.11
316(a)(last sentence)	11.6
(a)(1)(A)	6.5
(a)(1)(B)	6.4
(a)(2)	N.A.
(b)	6.7
(c)	9.4
317(a)(1)	6.8
(a)(2)	6.9
(b)	2.4
318(a)	11.1

N.A. means Not Applicable.

Note: This Cross-Reference Table shall not, for any purpose, be deemed to be part of this Indenture.

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INDENTURE dated as of March 8, 2006 among Dave & Busters, Inc., a Missouri corporation (the "*Company*"), the Guarantors (as defined herein) and The Bank of New York Trust Company, N.A., a national banking association, as trustee (the "*Trustee*").

Recitals Of The Company

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of (i) the Company's $11^{1}/_{4}$% Senior Notes, Series A, due 2014, issued on the Issue Date (the "Initial Notes") and the guarantee thereof by the Guarantors, (ii) if and when issued, an unlimited principal amount of additional $11^{1}/_{4}$% Senior Notes, Series A, due 2014 that may be offered from time to time subsequent to the Issue Date in a non-registered offering or $11^{1}/_{4}$% Senior Notes, Series B, due 2014 in a registered offering of the Company that may be offered from time to time subsequent to the Issue Date (the "*Additional Notes*") and the guarantee thereof by certain of the Company's Subsidiaries and (iii) if and when issued, the Company's $11^{1}/_{4}$% Senior Notes, Series B, due 2014 and the guarantees thereof by certain of the Company's Subsidiaries that may be issued from time to time in exchange for Initial Notes or Additional Notes pursuant to a Registration Rights Agreement (as hereinafter defined, the "*Exchange Notes*" and together with the Initial Notes and Additional Notes, the "*Notes*"). $175,000,000 in aggregate principal amount of Initial Notes shall be initially issued on the date hereof.

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders:

ARTICLE I
Definitions and Incorporation by Reference

SECTION 1.1 *Definitions.*

"*Acquired Indebtedness*" means Indebtedness (i) of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary or (ii) assumed in connection with the acquisition of assets from such Person, in each case whether or not Incurred by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Restricted Subsidiary or such acquisition. Acquired Indebtedness shall be deemed to have been Incurred, with respect to clause (i) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary and, with respect to clause (ii) of the preceding sentence, on the date of consummation of such acquisition of assets; provided, however, that Indebtedness of such Person acquired or assumed in connection with such acquisition of assets that is redeemed, defeased, retired or otherwise repaid at the time of or immediately upon consummation of the transactions by which such Person merges with or into or becomes a Restricted Subsidiary of such Person or such assets are acquired shall not be Acquired Indebtedness.

"*Additional Assets*" means (i) any assets (other than assets that are qualified as current assets under GAAP), property, plant or equipment (excluding working capital for the avoidance of doubt) to be used by the Company or a Restricted Subsidiary in a Related Business; (ii) assets (other than assets that are qualified as current assets under GAAP), property and/or the Capital Stock of a Person that becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Company or a Restricted Subsidiary; (iii) Capital Stock constituting a minority interest in any Person that at such time is a Restricted Subsidiary; or (iv) capital expenditures used or useful in a Related Business, *provided, however,* that, in the case of clauses (ii) and (iii), such Restricted Subsidiary is primarily engaged in a Related Business.

"*Affiliate*" of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"*Asset Disposition*" means any direct or indirect sale, lease (other than an operating lease entered into in the ordinary course of business), transfer, issuance or other disposition, or a series of related sales, leases, transfers, issuances or dispositions that are part of a common plan, of shares of Capital Stock of a Subsidiary (other than directors' qualifying shares), property or other assets (each referred to for the purposes of this definition as a "disposition") by the Company or any of its Restricted Subsidiaries, including any disposition by means of a merger, consolidation or similar transaction.

Notwithstanding the preceding, the following items shall not be deemed to be Asset Dispositions: (i) a disposition of assets by a Restricted Subsidiary to the Company or by the Company or a Restricted Subsidiary to a Restricted Subsidiary; (ii) the sale or other disposition of cash or Cash Equivalents in the ordinary course of business; (iii) the sale, lease, discount of products, services or accounts receivable in the ordinary course of business, including a disposition of inventory in the ordinary course of business; (iv) a disposition of damaged, obsolete or worn out equipment or equipment that is no longer useful in the conduct of the business of the Company and its Restricted Subsidiaries and that is disposed of in each case in the ordinary course of business; (v) transactions permitted under Article IV or any disposition that constitutes a Change of Control; (vi) an issuance of Equity Interests by a Restricted Subsidiary to the Company or to a Wholly Owned Subsidiary; (vii) for purposes of *Section 3.8* only, (a) the making of a Permitted Investment (provided that any cash or Cash Equivalents received in such Asset Disposition shall be treated as Net Available Cash) or (b) a disposition subject to *Section 3.4*; (viii) an Asset Swap effected in compliance with *Section 3.8*; (ix) dispositions of assets in a single transaction or series of related transactions with an aggregate fair market value of less than $1.0 million; (x) the creation of a Permitted Lien and dispositions in connection with Permitted Liens; (xi) dispositions of Investments or receivables, in each case in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements; (xii) the issuance by a Restricted Subsidiary of Preferred Stock that is permitted by the covenant described in *Section 3.3*; (xiii) the licensing or sublicensing of intellectual property or other general intangibles and licenses, leases or subleases of other property in the ordinary course of business which do not materially interfere with the business of the Company and its Restricted Subsidiaries; (xiv) the unwinding of any Hedging Obligations; (xv) the sale of Permitted Investments (other than sales of Equity Interests of any of the Company's Restricted Subsidiaries) made by the Company or any Restricted Subsidiary after the Issue Date, if such Permitted Investments were (a) received in exchange for, or purchased out of the Net Cash Proceeds of the substantially concurrent sale (other than to a Subsidiary of the Company) of, Equity Interests of the Company (other than Disqualified Stock) or (b) received in the form of, or were purchased from the proceeds of, a substantially concurrent contribution of common equity capital to the Company; *provided* that any such proceeds or contributions in clauses (a) and (b) will be excluded from clause (c)(ii) of the *Section 3.4(a)*; (xvi) foreclosure on assets; and (xvii) the sale or other Investment of Equity Interests of, or any Investment in, any Unrestricted Subsidiary.

"*Asset Swap*" means concurrent purchase and sale or exchange of Related Business Assets between the Company or any of its Restricted Subsidiaries and another Person; *provided* that any cash received must be applied in accordance with *Section 3.4*.

"*Attributable Indebtedness*" in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value (discounted at the interest rate implicit in the transaction) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended), determined in accordance with GAAP; *provided*, *however*, that if such Sale/Leaseback Transaction results in a Capitalized Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of "Capitalized Lease Obligations."

"*Average Life*" means, as of the date of determination, with respect to any Indebtedness or Preferred Stock, the quotient obtained by dividing (i) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Preferred Stock multiplied by the amount of such payment by (ii) the sum of all such payments.

"*Bankruptcy Law*" means Title 11 of the United States Code or any similar federal or state law for the relief of debtors.

"*Board of Directors*" means, as to any Person, the board of directors or managers, as applicable, of such Person (or, if such Person is a partnership, the board of directors or other governing body of the general partner or such Person) or any duly authorized committee thereof.

"*Board Resolution*" means a copy of a resolution or unanimous written consent certified by the Secretary or an Assistant Secretary of a company to have been duly adopted by the Board of Directors of such company and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"*Business Day*" means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York are authorized or required by law to close.

"*Capital Stock*" of any Person means: (i) in the case of a corporation, corporate stock; (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (iii) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and (iv) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible or exchangeable into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock, including, in each case, Preferred Stock.

"*Capitalized Lease Obligations*" means an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes in accordance with GAAP, and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation at the time any determination thereof is to be made as determined in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date such lease may be terminated without penalty.

"*Cash Equivalents*" means: (i) securities issued or directly and fully guaranteed or insured by the United States Government or any agency or instrumentality of the United States (*provided* that the full faith and credit of the United States is pledged in support thereof), having maturities of not more than one year from the date of acquisition; (ii) marketable general obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition and, at the time of acquisition, having a credit rating of "A" or better from either Standard & Poor's Ratings Services or Moody's Investors Service, Inc.; (iii) certificates of deposit, time deposits, Eurodollar time deposits, overnight bank deposits or bankers' acceptances having maturities of not more than one year from the date of acquisition thereof issued by any commercial bank the long-term debt of which is rated at the time of acquisition thereof at least "A" or the equivalent thereof by Standard & Poor's Ratings Services, or "A"

or the equivalent thereof by Moody's Investors Service, Inc., and having combined capital and surplus in excess of $500 million; (iv) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (i), (ii) and (iii) entered into with any bank meeting the qualifications specified in clause (iii) above; (v) commercial paper rated at the time of acquisition thereof at least "A-2" or the equivalent thereof by Standard & Poor's Ratings Services or "P-2" or the equivalent thereof by Moody's Investors Service, Inc., or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of investments, and in any case maturing within one year after the date of acquisition thereof; and (vi) interests in any investment company or money market fund which invests 95% or more of its assets in instruments of the type specified in clauses (i) through (v) above.

"*Change of Control*" means the occurrence of any of the following:

(1) the Company becomes aware that any "person" or "group" of related persons (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) other than one or more Permitted Holders has become the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that such person or group shall be deemed to have "beneficial ownership" of all shares that any such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Company or Holdings (or its successor by merger, consolidation or purchase of all or substantially all of its assets) (for the purposes of this clause, such person or group shall be deemed to beneficially own any Voting Stock of the Company or Holdings held by a parent entity, if such person or group "beneficially owns" (as defined above), directly or indirectly, more than 50% of the voting power of the Voting Stock of such parent entity); or

(2) the first day on which a majority of the members of the Board of Directors of the Company or Holdings are not Continuing Directors; or

(3) the sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of Holdings' or the Company's and its Restricted Subsidiaries taken as a whole to any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) other than a Permitted Holder; or

(4) the adoption by the stockholders of the Company or Holdings of a plan or proposal for the liquidation or dissolution of the Company or Holdings.

"*Clearstream*" means Clearstream Banking, société anonyme, or any successor securities clearing agency.

"*Code*" means the Internal Revenue Code of 1986, as amended.

"*Commodity Agreement*" means any commodity futures contract, commodity option or other similar agreement or arrangement entered into by the Company or any Restricted Subsidiary designed to protect the Company or any Restricted Subsidiaries against fluctuations in the price of commodities actually used in the ordinary course of business of the Company and its Restricted Subsidiaries.

"*Common Stock*" means with respect to any Person, any and all shares, interest or other participations in, and other equivalents (however designated and whether voting or nonvoting) of such Person's common stock whether or not outstanding on the Issue Date, and includes, without limitation, all series and classes of such common stock.

"*Consolidated Coverage Ratio*" means as of any date of determination, with respect to any Person, the ratio of (x) the aggregate amount of Consolidated EBITDA of such Person for the period of the most recent four consecutive fiscal quarters ending prior to the date of such determination for which financial statements are in existence to (y) Consolidated Interest Expense for such four fiscal quarters, *provided*, *however*, that:

(1) if the Company or any Restricted Subsidiary:

(a) has Incurred any Indebtedness since the beginning of such period that remains outstanding on such date of determination or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio is an Incurrence of Indebtedness, Consolidated EBITDA and Consolidated Interest Expense for such period shall be calculated after giving effect on a pro forma basis to such Indebtedness as if such Indebtedness had been Incurred on the first day of such period (except that in making such computation, the amount of Indebtedness under any revolving credit facility outstanding on the date of such calculation shall be deemed to be (i) the average daily balance of such Indebtedness during such four fiscal quarters or such shorter period for which such facility was outstanding or (ii) if such facility was created after the end of such four fiscal quarters, the average daily balance of such Indebtedness during the period from the date of creation of such facility to the date of such calculation) and the discharge of any other Indebtedness repaid, repurchased, defeased or otherwise discharged with the proceeds of such new Indebtedness as if such discharge had occurred on the first day of such period; or

(b) has repaid, repurchased, defeased or otherwise discharged any Indebtedness since the beginning of the period that is no longer outstanding on such date of determination or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio involves a discharge of Indebtedness (in each case other than Indebtedness Incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and the related commitment terminated), Consolidated EBITDA and Consolidated Interest Expense for such period shall be calculated after giving effect on a pro forma basis to such repayment, repurchase, defeasance or other discharge of such Indebtedness, including with the proceeds of such new Indebtedness, as if such discharge had occurred on the first day of such period;

(2) if since the beginning of such period the Company or any Restricted Subsidiary shall have made any Asset Disposition or disposed of any company, division, operating unit, segment, business, group of related assets or line of business or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio is such an Asset Disposition:

(a) the Consolidated EBITDA for such period shall be reduced by an amount equal to the Consolidated EBITDA (if positive) directly attributable to the assets which are the subject of such disposition for such period or increased by an amount equal to the Consolidated EBITDA (if negative) directly attributable thereto for such period; and

(b) Consolidated Interest Expense for such period shall be reduced by an amount equal to the Consolidated Interest Expense directly attributable to any Indebtedness of the Company or any Restricted Subsidiary repaid, repurchased, defeased or otherwise discharged (including, but not limited to, through the assumption of such Indebtedness by another Person if the Company and its Restricted Subsidiaries are no longer liable for such Indebtedness after the assumption thereof) with respect to the Company and its continuing Restricted Subsidiaries in connection with such disposition for such period (or, if the Capital Stock of any Restricted Subsidiary is sold, the Consolidated Interest Expense for such period directly attributable to the Indebtedness of such Restricted Subsidiary to the extent the Company and its continuing Restricted Subsidiaries are no longer liable for such Indebtedness after such sale);

(3) if since the beginning of such period the Company or any Restricted Subsidiary (by merger or otherwise) shall have made an Investment in any Restricted Subsidiary (or any Person which becomes a Restricted Subsidiary or is merged with or into the Company) or an acquisition of assets, including any acquisition of assets occurring in connection with a transaction causing a calculation to be made hereunder, which constitutes all or substantially all of a company, division, operating unit, segment, business, group of related assets or line of business, Consolidated EBITDA (plus adjustments which will only include annualized cost savings achievable within 180 days and which shall be itemized in an Officer's Certificate delivered to the Trustee by the chief financial officer of the Company) and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto (including the Incurrence of any Indebtedness) as if such Investment or acquisition occurred on the first day of such period; and

(4) if since the beginning of such period any Person (that subsequently became a Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary since the beginning of such period) shall have Incurred any Indebtedness or discharged any Indebtedness, made any Asset Disposition or any Investment or acquisition of assets that would have required an adjustment pursuant to clause (2) or (3) above if made by the Company or a Restricted Subsidiary during such period, Consolidated EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto as if such transaction occurred on the first day of such period.

For purposes of this definition, whenever pro forma effect is to be given to any calculation under this definition, the pro forma calculations shall be determined in good faith by a responsible financial or accounting officer of the Company (including pro forma expense and cost reductions calculated on a basis consistent with Regulation S-X under the Securities Act). If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest expense on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Interest Rate Agreement applicable to such Indebtedness if such Interest Rate Agreement has a remaining term in excess of 12 months). If any Indebtedness that is being given pro forma effect bears an interest rate at the option of the Company or any Restricted Subsidiary, the interest rate shall be calculated by applying such optional rate chosen by the Company or such Restricted Subsidiary.

"*Consolidated EBITDA*" for any period means, without duplication, the Consolidated Net Income for such period, plus the following to the extent deducted in calculating such Consolidated Net Income:

(1) Consolidated Interest Expense; plus

(2) Consolidated Income Taxes; plus

(3) consolidated depreciation expense; plus

(4) consolidated amortization expense or impairment charges recorded in connection with the application of Financial Accounting Standard No. 142 "Goodwill and Other Intangibles" and Financial Accounting Standard No. 144 "Accounting for the Impairment or Disposal of Long Lived Assets;" plus

(5) other non-cash charges reducing Consolidated Net Income (excluding any such non-cash charge to the extent it represents an accrual of or reserve for cash charges in any future period or amortization of a prepaid cash expense that was paid in a prior period not included in the calculation); plus

(6) fees, expenses and charges resulting from the Transactions described in the Offering Memorandum; plus

(7) the aggregate amount of cash Preopening Costs incurred during such period in an aggregate amount not to exceed $3.0 million in any period; plus

(8) payments made pursuant to the Expense Reimbursement Agreement as in effect on the Issue Date not to exceed $750,000 during any fiscal year; less

(9) noncash items increasing Consolidated Net Income of such Person for such period (excluding any items which represent the reversal of any accrual of, or reserve for, anticipated cash charges made in any prior period).

Notwithstanding the preceding sentence, clauses (2) through (5), (7) and (9) relating to amounts of a Restricted Subsidiary of a Person shall be added to Consolidated Net Income to compute Consolidated EBITDA of such Person only to the extent (and in the same proportion) that the net income (loss) of such Restricted Subsidiary was included in calculating the Consolidated Net Income of such Person and, to the extent the amounts set forth in clauses (2) through (5), (7) and (9) are in excess of those necessary to offset a net loss of such Restricted Subsidiary or if such Restricted Subsidiary has net income for such period included in Consolidated Net Income, only if a corresponding amount would be permitted at the date of determination to be dividended to the Company by such Restricted Subsidiary without prior approval (that has not been obtained), pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to that Restricted Subsidiary or its stockholders.

"*Consolidated Income Taxes*" means, with respect to any Person for any period, taxes imposed upon such Person or other payments required to be made by such Person by any governmental authority which taxes or other payments are calculated by reference to the income or profits of such Person or such Person and its Restricted Subsidiaries (to the extent such income or profits were included in computing Consolidated Net Income for such period), regardless of whether such taxes or payments are required to be remitted to any governmental authority.

"*Consolidated Interest Expense*" means, for any period, the total interest expense of the Company and its consolidated Restricted Subsidiaries, whether paid or accrued, plus, to the extent not included in such interest expense:

(1) interest expense attributable to Capitalized Lease Obligations and the interest portion of rent expense associated with Attributable Indebtedness in respect of the relevant lease giving rise thereto, determined as if such lease were a capitalized lease in accordance with GAAP and the interest component of any deferred payment obligations;

(2) amortization of debt discount and debt issuance cost (*provided* that any amortization of bond premium shall be credited to reduce Consolidated Interest Expense unless, pursuant to GAAP, such amortization of bond premium has otherwise reduced Consolidated Interest Expense);

(3) non-cash interest expense;

(4) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing;

(5) the interest expense on Indebtedness of another Person that is Guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, whether or not such Guarantee or Lien is called upon;

(6) costs associated with Hedging Obligations (including amortization of fees) *provided*, *however*, that if Hedging Obligations result in net benefits rather than costs, such benefits shall be credited to reduce Consolidated Interest Expense unless, pursuant to GAAP, such net benefits are otherwise reflected in Consolidated Net Income;

(7) the consolidated interest expense of such Person and its Restricted Subsidiaries that was capitalized during such period;

(8) the product of (a) all dividends paid or payable, in cash, Cash Equivalents or Indebtedness or accrued during such period on any series of Disqualified Stock of such Person or on Preferred Stock of its Restricted Subsidiaries that are not Guarantors payable to a party other than the Company or a Wholly Owned Subsidiary, times (b) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state, provincial and local statutory tax rate of such Person, expressed as a decimal, in each case, on a consolidated basis and in accordance with GAAP;

(9) Receivables Fees; and

(10) the cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than the Company and its Restricted Subsidiaries) in connection with Indebtedness Incurred by such plan or trust.

For the purpose of calculating the Consolidated Coverage Ratio in connection with the Incurrence of any Indebtedness described in the final paragraph of the definition of "Indebtedness", the calculation of Consolidated Interest Expense shall include all interest expense (including any amounts described in clauses (1) through (10) above) relating to any Indebtedness of the Company or any Restricted Subsidiary described in the final paragraph of the definition of "Indebtedness."

For purposes of the foregoing, total interest expense shall be determined (i) after giving effect to any net payments made or received by the Company and its Subsidiaries with respect to Interest Rate Agreements and (ii) exclusive of amounts classified as other comprehensive income in the balance sheet of the Company. Notwithstanding anything to the contrary contained herein, commissions, discounts, yield and other fees and charges Incurred in connection with any transaction pursuant to which the Company or its Restricted Subsidiaries may sell, convey or otherwise transfer or grant a security interest in any accounts receivable or related assets shall be included in Consolidated Interest Expense.

"*Consolidated Net Income*" means, for any period, the net income (loss) of the Company and its consolidated Restricted Subsidiaries determined in accordance with GAAP; *provided*, *however*, that there shall not be included in such Consolidated Net Income:

(1) any net income (loss) of any Person if such Person is not a Restricted Subsidiary, except that:

(a) subject to the limitations contained in clauses (3), (4) and (5) below, the Company's equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Company or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to a Restricted Subsidiary, to the limitations contained in clause (2) below); and

(b) the Company's equity in a net loss of any such Person (other than an Unrestricted Subsidiary) for such period shall be included in determining such Consolidated Net Income to the extent such loss has been funded with cash from the Company or a Restricted Subsidiary;

(2) any net income (but not loss) of any Restricted Subsidiary if such Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Restricted Subsidiary, directly or indirectly, to the Company, except that:

(a) subject to the limitations contained in clauses (3), (4) and (5) below, the Company's equity in the net income of any such Restricted Subsidiary for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash that could have been distributed by such Restricted Subsidiary during such period to the Company or another Restricted Subsidiary as a dividend (subject, in the case of a dividend to another Restricted Subsidiary, to the limitation contained in this clause); and

(b) the Company's equity in a net loss of any such Restricted Subsidiary for such period shall be included in determining such Consolidated Net Income;

(3) any gain (loss) realized upon the sale or other disposition of any property, plant or equipment of the Company or its consolidated Restricted Subsidiaries (including pursuant to any Sale/Leaseback Transaction) which is not sold or otherwise disposed of in the ordinary course of business and any gain (loss) realized upon the sale or other disposition of any Capital Stock of any Person;

(4) any extraordinary gain or loss; and

(5) the cumulative effect of a change in accounting principles.

Corporate overhead expenses payable by Holdings described in clause (9) of *Section 3.4(b)*, the funds for which are provided by the Company and/or its Restricted Subsidiaries, shall be deducted in calculating the Consolidated Net Income of the Company and its Restricted Subsidiaries.

"*Consolidated Net Tangible Assets*" means Consolidated Total Assets after deducting: (i) all current liabilities; (ii) any item representing investments in Unrestricted Subsidiaries; and (iii) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other intangibles.

"*Consolidated Total Assets*" as of any date of determination, means the total amount of assets which would appear on a consolidated balance sheet of the Company and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP.

"*Continuing Directors*" means, as of any date of determination, any member of the Board of Directors of the Company or Holdings, as the case may be, who: (1) was a member of such Board of Directors on the date of this Indenture; or (2) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of the relevant Board at the time of such nomination or election.

"*Corporate Trust Office*" means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 600 North Pearl Street, Suite 420, Dallas, Texas 75201, Attention: Corporate Trust Administration, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

"*Credit Facility*" means, with respect to the Company or any Guarantor, one or more debt facilities (including, without limitation, the Senior Secured Credit Agreement or commercial paper facilities with banks or other institutional lenders providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables) or letters of credit, in each case, as amended, restated, modified, renewed, refunded, replaced (whether or not contemporaneously) or refinanced (including increasing the amount of available borrowings thereunder (*provided* that such increase in borrowings is permitted by *Section 3.3*) (including by means of sales of debt securities to institutional investors) in whole or in part from time to time (and whether or not with the original administrative agent and lenders or another administrative agent or agents or other lenders and whether provided under the original Senior Secured Credit Agreement or any other credit or other agreement or indenture).

"*Currency Agreement*" means in respect of a Person any foreign exchange contract, currency swap agreement, futures contract, option contract or other similar agreement as to which such Person is a party or a beneficiary.

"*Custodian*" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

"*Default*" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"*Defaulted Interest*" shall have the meaning set forth in *Section 2.14*.

"*Definitive Notes*" means certificated securities.

"*Depositary*" means The Depository Trust Company, its nominees and their respective successors and assigns, or such other depository institution hereinafter appointed by the Company.

"*Disqualified Stock*" means, with respect to any Person, any Capital Stock of such Person which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event: (1) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise; (2) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock which is convertible or exchangeable solely at the option of the Company or a Restricted Subsidiary); or (3) is redeemable at the option of the holder of the Capital Stock in whole or in part; in each case on or prior to the date that is 91 days after the earlier of the date (a) of the Stated Maturity of the Notes or (b) on which there are no Notes outstanding, *provided* that only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; *provided*, *further* that any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Company to repurchase such Capital Stock upon the occurrence of a change of control or asset sale (each defined in a substantially identical manner to the corresponding definitions in this Indenture) shall not constitute Disqualified Stock if the terms of such Capital Stock (and all such securities into which it is convertible or for which it is ratable or exchangeable) provide that the Company may not repurchase or redeem any such Capital Stock (and all such securities into which it is convertible or for which it is ratable or exchangeable) pursuant to such provision prior to compliance by the Company with the provisions contained in *Sections 3.8* and *3.10* of this Indenture and such repurchase or redemption complies with *Section 3.4* of this Indenture.

"*Domestic Subsidiary*" means any Restricted Subsidiary that is organized under the laws of the United States of America or any state thereof or the District of Columbia and any Subsidiary of such Restricted Subsidiary, other than any Restricted Subsidiary that is a Foreign Subsidiary.

"*Equity Interests*" means Capital Stock and all warrants, options, profits, interests, equity appreciation rights or other rights to acquire or purchase Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

"*Equity Offering*" means (i) an offering for cash by the Company or Holdings, as the case may be, of its Common Stock, or options, warrants or rights with respect to its Common Stock, or (ii) a cash capital contribution to the Company or any of its Restricted Subsidiaries, in each case other than (x) public offerings with respect to the Company's or Holdings', as the case may be, Common Stock, or options, warrants or rights, registered on Form S-4 or S-8, (y) an issuance to any Subsidiary or (z) any offering of Common Stock issued in connection with a transaction that constitutes a Change of Control.

"*Euroclear*" means Euroclear Bank S.A./N.V. or any successor securities clearing agency.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended and the rules and regulations of the SEC promulgated thereunder.

"*Exchange Offer*" shall have the meaning set forth in the Registration Rights Agreement.

"*Exchange Securities*" shall have the meaning set forth in the Registration Rights Agreement.

"*Expense Reimbursement Agreement*" means the Expense Reimbursement Agreement between the Company, Wellspring Capital Management LLC and HBK Investments L.P. (and their permitted successors and assigns thereunder) as in effect on the Issue Date.

"*Fiscal Year*" means the fiscal year of the Company ending on the Sunday after the Saturday closest to January 31 of each year or such other fiscal year as may be determined by the Company and the Board of Directors and of which the Trustee shall receive written notice pursuant to *Section 3.20* hereof.

"*Foreign Subsidiary*" means any Restricted Subsidiary that is not organized under the laws of the United States of America or any state thereof or the District of Columbia and any Subsidiary of such Restricted Subsidiary.

"*GAAP*" means generally accepted accounting principles in the United States of America as in effect as of the date of this Indenture, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession. All ratios and computations based on GAAP contained in this Indenture shall be computed in conformity with GAAP.

"*Guarantee*" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise); or

(2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

provided, however, that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

"*Guarantor*" means each Restricted Subsidiary (other than Foreign Subsidiaries) in existence on the Issue Date that provides a Note Guarantee on the Issue Date (and any other Restricted Subsidiary that provides a Note Guarantee in accordance with this Indenture); *provided* that upon release or discharge of such Restricted Subsidiary from its Note Guarantee in accordance with this Indenture, such Restricted Subsidiary shall cease to be a Guarantor,

"*Guarantor Pari Passu Indebtedness*" means Indebtedness of a Guarantor that ranks equally in right of payment to its Note Guarantee.

"*Guarantor Subordinated Obligation*" means, with respect to a Guarantor, any Indebtedness of such Guarantor (whether outstanding on the Issue Date or thereafter Incurred) which is expressly subordinated in right of payment to the obligations of such Guarantor under its Note Guarantee pursuant to a written agreement.

"*Hedging Obligations*" of any Person means the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodity Agreement.

"*Holder*" means a Person in whose name a Note is registered on the Registrar's books.

"*Holdings*" means WS Midway Holdings, Inc., a Delaware corporation.

"*Incur*" means issue, create, assume, Guarantee, incur or otherwise become liable for; *provided, however,* that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary; and the terms "Incurred" and "Incurrence" have meanings correlative to the foregoing.

"*Indebtedness*" means, with respect to any Person on any date of determination (without duplication): (i) the principal of and premium (if any) in respect of indebtedness of such Person for borrowed money; (ii) the principal of and premium (if any) in respect of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments; (iii) the principal component of all obligations of such Person in respect of letters of credit, bankers' acceptances or other similar instruments (including reimbursement obligations with respect thereto except to the extent such reimbursement obligation relates to a trade payable and such obligation is satisfied within 30 days of Incurrence); (iv) the principal component of all obligations of such Person to pay the deferred and unpaid purchase price of property (except trade payables), which purchase price is due more than six months after the date of placing such property in service or taking delivery and title thereto; (v) Capitalized Lease Obligations and all Attributable Indebtedness of such Person; (vi) the principal component or liquidation preference of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock or, with respect to any Subsidiary that is not a Guarantor, any Preferred Stock; (vii) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; *provided, however,* that the amount of such Indebtedness shall be the lesser of (A) the fair market value of such asset at such date of determination and (B) the amount of such Indebtedness of such other Persons; (viii) the principal component of Indebtedness of other Persons to the extent Guaranteed by such Person; and (ix) to the extent not otherwise included in this definition, net obligations of such Person under Hedging Obligations (the amount of any such obligations to be equal at any time to the termination value of such agreement or arrangement giving rise to such obligation that would be payable by such Person at such time).

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date. Notwithstanding the foregoing, money borrowed and set aside at the time of the Incurrence of any Indebtedness in order to pre-fund the payment of interest on such Indebtedness shall not be deemed to be "Indebtedness" *provided* that such money is held to secure the payment of such interest.

In addition, "Indebtedness" of any Person shall include Indebtedness described in the preceding paragraph that would not appear as a liability on the balance sheet of such Person if:

(1) such Indebtedness is the obligation of a partnership or joint venture that is not a Restricted Subsidiary (a "*Joint Venture*");

(2) such Person or a Restricted Subsidiary of such Person is a general partner of the Joint Venture (a "*General Partner*"); and

(3) there is recourse, by contract or operation of law, with respect to the payment of such Indebtedness to property or assets of such Person or a Restricted Subsidiary of such Person; and then such Indebtedness shall be included in an amount not to exceed:

(a) the lesser of (i) the net assets of the General Partner and (ii) the amount of such obligations to the extent that there is recourse, by contract or operation of law, to the property or assets of such Person or a Restricted Subsidiary of such Person; or

(b) if less than the amount determined pursuant to clause (a) immediately above, the actual amount of such Indebtedness that is recourse to such Person or a Restricted Subsidiary of such Person, if the Indebtedness is evidenced by a writing and is for a determinable amount.

"*Indenture*" means this Indenture, as amended or supplemented from time to time.

"*Interest Rate Agreement*" means, with respect to any Person, any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement as to which such Person is party or a beneficiary.

"*Investment*" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of any direct or indirect advance, loan (other than advances or extensions of credit to customers in the ordinary course of business) or other extensions of credit (including by way of Guarantee or similar arrangement, but excluding any debt or extension of credit represented by a bank deposit other than a time deposit) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by, such Person and all other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP; *provided* that none of the following shall be deemed to be an Investment:

(1) Hedging Obligations entered into in the ordinary course of business and in compliance with this Indenture;

(2) endorsements of negotiable instruments and documents in the ordinary course of business; and

(3) an acquisition of assets, Capital Stock or other securities by the Company or a Subsidiary for consideration to the extent such consideration consists of Common Stock of the Company.

For purposes of *Section 3.4*, (i) "Investment" shall include the portion (proportionate to the Company's equity interest in a Restricted Subsidiary to be designated as an Unrestricted Subsidiary) of the fair market value of the net assets of such Restricted Subsidiary at the time that such Restricted Subsidiary is designated an Unrestricted Subsidiary; *provided, however,* that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to (a) the Company's "Investment" in such Subsidiary at the time of such redesignation less (b) the portion (proportionate to the Company's equity interest in such Subsidiary) of the fair market value of the net assets (as conclusively determined by the Board of Directors of the Company in good faith) of such Subsidiary at the time that such Subsidiary is so redesignated a Restricted Subsidiary; (ii) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Board of Directors of the Company; and (iii) if the Company or any Restricted Subsidiary sells or otherwise disposes of any Voting Stock of any Restricted Subsidiary such that, after giving effect to any such sale or disposition, such entity is no longer a Subsidiary of the Company, the Company shall be deemed to have made an Investment on the date of any such sale or disposition equal to the fair market value (as conclusively determined by the Board of Directors of the Company in good faith) of the Capital Stock of such Subsidiary not sold or disposed of.

"*Issue Date*" means March 8, 2006.

"*Legal Holiday*" has the meaning ascribed to it in *Section 11.8*.

"*Lien*" means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

"*Merger Agreement*" means the Agreement and Plan of Merger by and among Dave & Buster's, Inc., WS Midway Acquisition Sub, Inc. and Holdings, dated as of December 8, 2005.

"*Net Available Cash*" from an Asset Disposition means cash payments received (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise and net proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition or received in any other non-cash form) therefrom, in each case net of:

(1) all legal, accounting, investment banking, title and recording tax expenses, commissions and other fees and expenses Incurred, and all Federal, state, provincial, foreign and local taxes required to be paid or accrued as a liability under GAAP (after taking into account any available tax credits or deductions and any tax sharing agreements), as a consequence of such Asset Disposition;

(2) all payments made on any Indebtedness which is secured by any assets subject to such Asset Disposition, in accordance with the terms of any Lien upon such assets, or which must by its terms, or in order to obtain a necessary consent to such Asset Disposition, or by applicable law is required to be repaid out of the proceeds from such Asset Disposition;

(3) all distributions and other payments required to be made to minority interest holders in Subsidiaries or joint ventures as a result of such Asset Disposition; and

(4) the deduction of appropriate amounts to be provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the assets disposed of in such Asset Disposition and retained by the Company or any Restricted Subsidiary after such Asset Disposition.

"*Net Cash Proceeds*" with respect to any issuance or sale of Capital Stock means the cash proceeds of such issuance or sale net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, listing fees, discounts or commissions and brokerage, consultant and other fees and charges actually Incurred in connection with such issuance or sale and net of taxes paid or payable as a result of such issuance or sale (after taking into account any available tax credit or deductions and any tax sharing arrangements); *provided* that the cash proceeds of an Equity Offering by Holdings shall not be deemed Net Cash Proceeds, except to the extent such cash proceeds are contributed to the Company.

"*Non-Guarantor Restricted Subsidiary*" means any Restricted Subsidiary that is not a Guarantor.

"*Non Recourse Debt*" means Indebtedness of a Person:

(1) as to which neither the Company nor any Restricted Subsidiary (a) provides any Guarantee or credit support of any kind (including any undertaking, guarantee, indemnity, agreement or instrument that would constitute Indebtedness) or (b) is directly or indirectly liable (as a guarantor or otherwise);

(2) no default with respect to which (including any rights that the holders thereof may have to take enforcement action against an Unrestricted Subsidiary) would permit (upon notice, lapse of time or both) any holder of any other Indebtedness of the Company or any Restricted Subsidiary to declare a default under such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity; and

(3) the explicit terms of which provide there is no recourse against any of the assets of the Company or its Restricted Subsidiaries.

"*Note Guarantee*" means, individually, any Guarantee of payment of the Notes and Exchange Securities issued in a registered Exchange Offer pursuant to the Registration Rights Agreement by a Guarantor pursuant to the terms of this Indenture and any supplemental indenture thereto, and, collectively, all such Guarantees. Each such Guarantee will be substantially in the form of Exhibit C hereto.

"*Note Register*" means the register of Notes, maintained by the Registrar, pursuant to *Section 2.3*.

"*Notes*" means the Notes issued under this Indenture.

"*Notes Custodian*" means the custodian with respect to the Global Notes (as appointed by the Depositary), or any successor Person thereto and shall initially be the Trustee.

"*Offering Memorandum*" means the Offering Memorandum, dated March 3, 2006 relating to the issuance of the Notes.

"*Officer*" means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer or the Secretary of the Company. Officer of any Guarantor has a correlative meaning.

"*Officers' Certificate*" means a certificate signed by two Officers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of the Company.

"Opinion of Counsel" means a written opinion from legal counsel (that is subject to customary qualifications and assumptions). The counsel may be an employee of or counsel to the Company or the Trustee.

"*Pari Passu Indebtedness*" means Indebtedness that ranks equally in right of payment to the Notes.

"*Permitted Holders*" means Wellspring Capital Management LLC ("Wellspring"), investment funds managed by Wellspring, partners of Wellspring and any Affiliates or Related Persons thereof.

"*Permitted Investment*" means an Investment by the Company or any Restricted Subsidiary in:

(1) (a) a Restricted Subsidiary that is a Guarantor or (b) a Person which shall, upon the making of such Investment, become a Restricted Subsidiary that is a Guarantor; *provided*, *however*, that the primary business of such Restricted Subsidiary is a Related Business;

(2) another Person if as a result of such Investment such other Person is merged or consolidated with or into, or transfers or conveys all or substantially all its assets to, the Company or a Restricted Subsidiary that is a Guarantor; *provided*, *however*, that such Person's primary business is a Related Business;

(3) cash and Cash Equivalents;

(4) receivables owing to the Company or any Restricted Subsidiary created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; *provided*, *however*, that such trade terms may include such concessionary trade terms as the Company or any such Restricted Subsidiary deems reasonable under the circumstances;

(5) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(6) to the extent permitted by applicable law, loans or advances to employees (other than executive officers) of the Company and its Restricted Subsidiaries made in the ordinary course of business consistent with past practices of the Company or such Restricted Subsidiary in an aggregate amount at any one time outstanding not to exceed $2.5 million (loans or advances that are forgiven shall continue to be deemed outstanding);

(7) Equity Interests, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Company or any Restricted Subsidiary or in satisfaction of judgments or pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of a debtor;

(8) Investments made as a result of the receipt of non-cash consideration from an Asset Disposition that was made pursuant to and in compliance with *Section 3.8*;

(9) Investments in existence on the Issue Date;

(10) Currency Agreements, Interest Rate Agreements, Commodity Agreements and related Hedging Obligations, which transactions or obligations are Incurred in compliance with *Section 3.3*;

(11) Investments by the Company or any of its Restricted Subsidiaries, together with all other Investments pursuant to this clause (11), in an aggregate amount at the time of such Investment not to exceed $15.0 million outstanding at any one time (with the fair market value of such Investment being measured at the time made and without giving effect to subsequent changes in value);

(12) Guarantees issued in accordance with *Section 3.3*;

(13) any Asset Swap made in accordance with *Section 3.8*;

(14) any acquisition of assets or Equity Interests solely in exchange for, or out of the Net Cash Proceeds received from, the substantially contemporaneous issuance of Equity Interests (other than Disqualified Stock) of the Company; *provided* that the amount of any such Net Cash Proceeds that are utilized for any such Investment pursuant to this clause (14) will be excluded from clause (c)(ii) of *Section 3.4(a)*;

(15) endorsements of negotiable instruments and documents in the ordinary course of business; and

(16) pledges or deposits permitted under clause (2) of the definition of Permitted Liens.

"*Permitted Liens*" means, with respect to any Person:

(1) Liens securing Indebtedness and other obligations under the Senior Secured Credit Agreement and related Hedging Obligations and liens on assets of Restricted Subsidiaries securing Guarantees of Indebtedness and other obligations of the Company under the Senior Secured Credit Agreement permitted to be Incurred under this Indenture in an aggregate principal amount at any one time outstanding not to exceed $160.0 million;

(2) pledges or deposits by such Person under workmen's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or United States government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import or customs duties or for the payment of rent, in each case Incurred in the ordinary course of business;

(3) Liens imposed by law, including carriers', warehousemen's, mechanics', materialmen's and repairmen's Liens in each case for sums not yet due or being contested in good faith by appropriate proceedings if a reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made in respect thereof;

(4) Liens for taxes, assessments or other governmental charges not yet subject to penalties for non-payment or which are being contested in good faith by appropriate proceedings provided appropriate reserves required pursuant to GAAP have been made in respect thereof;

(5) Liens in favor of issuers of surety or performance bonds or letters of credit or bankers' acceptances issued pursuant to the request of and for the account of such Person in the ordinary course of its business; *provided*, *however*, that such letters of credit do not constitute Indebtedness;

(6) encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) as to the use of real properties or liens incidental to the conduct of the business of such Person or to the ownership of its properties which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(7) Liens securing Hedging Obligations so long as the related Indebtedness is, and is permitted to be under this Indenture, secured by a Lien on the same property securing such Hedging Obligation;

(8) leases, licenses, subleases and sublicenses of assets (including, without limitation, real property and intellectual property rights) which do not materially interfere with the ordinary conduct of the business of the Company or any of its Restricted Subsidiaries;

(9) judgment Liens not giving rise to an Event of Default so long as such Lien is adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(10) Liens for the purpose of securing the payment of all or a part of the purchase price of, or Capitalized Lease Obligations, purchase money obligations or other payments Incurred to finance the acquisition, lease, improvement or construction of, assets or property acquired or constructed in the ordinary course of business, *provided* that:

(a) the aggregate principal amount of Indebtedness secured by such Liens is otherwise permitted to be Incurred under this Indenture and does not exceed the cost of the assets or property so acquired or constructed; and

(b) such Liens are created within 180 days of construction or acquisition of such assets or property and do not encumber any other assets or property of the Company or any Restricted Subsidiary other than such assets or property and assets affixed or appurtenant thereto;

(11) Liens arising solely by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depositary institution; *provided* that:

(a) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by the Company in excess of those set forth by regulations promulgated by the Federal Reserve Board; and

(b) such deposit account is not intended by the Company or any Restricted Subsidiary to provide collateral to the depository institution;

(12) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Company and its Restricted Subsidiaries in the ordinary course of business;

(13) Liens existing on the Issue Date, other than Liens Incurred pursuant to clause (1) of this definition;

(14) Liens on property or Capital Stock of a Person at the time such Person becomes a Restricted Subsidiary; *provided*, *however*, that such Liens are not created, Incurred or assumed in connection with, or in contemplation of, such other Person becoming a Restricted Subsidiary; *provided*, *further*, *however*, that any such Lien may not extend to any other property owned by the Company or any Restricted Subsidiary;

(15) Liens on property at the time the Company or a Restricted Subsidiary acquired the property, including any acquisition by means of a merger or consolidation with or into the Company or any Restricted Subsidiary; *provided*, *however*, that such Liens are not created, Incurred or assumed in connection with, or in contemplation of, such acquisition; *provided further*, *however*, that such Liens may not extend to any other property owned by the Company or any Restricted Subsidiary;

(16) Liens securing Indebtedness or other obligations of a Restricted Subsidiary owing to the Company or another Restricted Subsidiary;

(17) Liens securing the Notes and Note Guarantees;

(18) Liens securing Refinancing Indebtedness Incurred to refinance, refund, replace, amend, extend or modify, as a whole or in part, Indebtedness that was previously so secured pursuant to clauses (10), (13), (14), (15), (17) and (20), *provided* that any such Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness being refinanced or is in respect of property that is the security for a Permitted Lien hereunder;

(19) any interest or title of a lessor under any Capitalized Lease Obligation or operating lease;

(20) Liens under industrial revenue, municipal or similar bonds;

(21) Liens securing Indebtedness (other than Subordinated Obligations and Guarantor Subordinated Obligations) in an aggregate principal amount outstanding at any one time not to exceed $5.0 million; and

(22) Liens securing Indebtedness and other obligations of Foreign Subsidiaries that are incurred in accordance with *Section 3.3* in an aggregate principal amount outstanding at any one time not to exceed $5.0 million.

"*Person*" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision thereof or any other entity.

"*Preferred Stock*," as applied to the Capital Stock of any corporation, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation.

"*Preopening Costs*" means "start-up costs" (such term used herein as defined in SOP 98-5 published by the American Institute of Certified Public Accountants) related to the acquisition, opening and organizing of new restaurants, including, without limitation, the cost of feasibility studies, staff training and recruiting and travel costs for employees engaged in such start-up activities.

"*QIB*" means any "qualified institutional buyer" (as defined in Rule 144A under the Securities Act).

"*Receivable*" means a right to receive payment arising from a sale or lease of goods or the performance of services by a Person pursuant to an arrangement with another Person pursuant to which such other Person is obligated to pay for goods or services under terms that permit the purchase of such goods and services on credit and shall include, in any event, any items of property that would be classified as an "account," "chattel paper," "payment intangible" or "instrument" under the Uniform Commercial Code as in effect in the State of New York and any "supporting obligations" as so defined.

"*Receivables Fees*" means any fees or interest paid to purchasers or lenders providing the financing in connection with a factoring agreement or other similar agreement, including any such amounts paid by discounting the face amount of Receivables or participations therein transferred in connection with a factoring agreement or other similar arrangement, regardless of whether any such transaction is structured as on-balance sheet or off-balance sheet or through a Restricted Subsidiary or an Unrestricted Subsidiary.

"*Refinancing Indebtedness*" means Indebtedness that is Incurred to refund, refinance, replace, exchange, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) (collectively, "refinance," "refinances," and "refinanced" shall have a correlative meaning) any Indebtedness existing on the date of this Indenture or Incurred in compliance with this Indenture (including Indebtedness of the Company that refinances Indebtedness of any Restricted Subsidiary and Indebtedness of any Restricted Subsidiary that refinances Indebtedness of another Restricted Subsidiary or the Company) including Indebtedness that refinances Refinancing Indebtedness; *provided, however,* that:

(1) (a) if the Stated Maturity of the Indebtedness being refinanced is earlier than the Stated Maturity of the Notes, the Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being refinanced or (b) if the Stated Maturity of the Indebtedness being refinanced is later than the Stated Maturity of the Notes, the Refinancing Indebtedness has a Stated Maturity at least 91 days later than the Stated Maturity of the Notes;

(2) the Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being refinanced;

(3) such Refinancing Indebtedness is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refinanced (plus, without duplication, any additional Indebtedness Incurred to pay interest or premiums required by the instruments governing such existing Indebtedness and fees Incurred in connection therewith); and

(4) if the Indebtedness being refinanced is subordinated in right of payment to the Notes or a Subsidiary's Note Guarantee, such Refinancing Indebtedness is subordinated in right of payment to the Notes or a Subsidiary's Note Guarantee on terms at least as favorable to the holders as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded.

"*Registration Rights Agreement*" means that certain registration rights agreement dated as of the date of this Indenture by and among the Company, the Guarantors and the initial purchaser set forth therein and, with respect to any Additional Notes, one or more substantially similar registration rights agreements among the Company and the other parties thereto as such agreements may be amended from time to time.

"*Related Business*" means (x) any business which is the same as or related, ancillary or complementary to, or a reasonable extension or expansion of, any of the businesses of the Company and its Restricted Subsidiaries on the date of this Indenture and (y) any unrelated businesses to the extent it is not material to the Company.

"*Related Business Assets*" means assets used or useful in a Related Business.

"*Related Person*" with respect to any Permitted Holder means:

(1) any controlling stockholder or a majority (or more) owned Subsidiary of such Permitted Holder or, in the case of an individual, any spouse or immediate family member of such Permitted Holder, any trust created for the benefit of such individual or such individual's estate, executor, administrator, committee or beneficiaries; or

(2) any trust, corporation, partnership or other entity, the beneficiaries, stockholders, partners, owners or Persons beneficially holding a majority (or more) controlling interest of which consist of such Permitted Holder and/or such other Persons referred to in the immediately preceding clause (1).

"*Responsible Officer*" shall mean, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"*Restricted Investment*" means any Investment other than a Permitted Investment.

"*Restricted Note*" means a Note that constitutes a "restricted security" within the meaning of Rule 144(a)(3) under the Securities Act; *provided*, *however*, that the Trustee shall be entitled to request and conclusively rely on an opinion of counsel with respect to whether any Note constitutes a Restricted Note.

"*Restricted Notes Legend*" means the Private Placement Legend set forth in clause (A) of *Section 2.1(d)* or the Regulation S Legend set forth in clause (B) of *Section 2.1(d)*, as applicable.

"*Restricted Subsidiary*" means any Subsidiary of the Company other than an Unrestricted Subsidiary.

"*Sale/Leaseback Transaction*" with respect to any Person means an arrangement relating to property now owned or hereafter acquired whereby the Company or a Restricted Subsidiary transfers such property to a Person and the Company or a Restricted Subsidiary leases it from such Person.

"*SEC*" means the United States Securities and Exchange Commission.

"*Securities Act*" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"*Senior Secured Credit Agreement*" means the Credit Agreement to be entered into among Holdings, the Company, as Borrower, 6131646 Canada Inc., as Canadian Borrower, a documentation agent, a syndication agent, JPMorgan Chase Bank N.A., as Administrative Agent, and the lenders parties thereto from time to time, as the same may be amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time (including increasing the amount loaned thereunder *provided* that such additional Indebtedness is Incurred in accordance with *Section 3.3*); *provided* that a Senior Secured Credit Agreement shall not (x) include Indebtedness issued, created or Incurred pursuant to a registered offering of securities under the Securities Act or a private placement of securities (including under Rule 144A or Regulation S) pursuant to an exemption from the registration requirements of the Securities Act or (y) relate to indebtedness that does not consist exclusively of Pari Passu Indebtedness or Guarantor Pari Passu Indebtedness.

"*Shelf Registration Statement*" shall have the meaning set forth in the Registration Rights Agreement.

"*Significant Subsidiary*" means any Restricted Subsidiary that would be a "Significant Subsidiary" of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

"*Stated Maturity*" means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

"*Subordinated Obligation*" means any Indebtedness of the Company (whether outstanding on the Issue Date or thereafter Incurred) which is subordinated or junior in right of payment to the Notes pursuant to a written agreement.

"*Subsidiary*" of any Person means (a) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total ordinary voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof (or persons performing similar functions) or (b) any partnership, joint venture, limited liability company or similar entity of which more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, is, in the case of clauses (a) and (b), at the time owned or controlled, directly or indirectly, by (1) such Person, (2) such Person and one or more Subsidiaries of such Person or (3) one or more Subsidiaries of such Person. Unless otherwise specified herein, each reference to a Subsidiary shall refer to a Subsidiary of the Company.

"*Subsidiary Guarantees*" shall have the meaning set forth in the Registration Rights Agreement.

"*Successor Company*" shall have the meaning assigned thereto in clause (i) of *Section 4.1*.

"*TIA*" or "*Trust Indenture Act*" means the Trust Indenture Act of 1939 (15 *U.S.C.* §§ 77aaa-77bbbb), as in effect from time to time.

"*Transactions*" means the transactions contemplated by the Merger Agreement, the initial borrowings under the Senior Secured Credit Agreement, the issuance of the Notes, the application of the proceeds therefrom and the payment of related fees and expenses.

"*Trustee*" means the party named as such in this Indenture until a successor replaces it and, thereafter, means such successor.

"*Unrestricted Subsidiary*" means:

(1) any Subsidiary of the Company that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors of the Company in the manner provided below; and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Board of Directors of the Company may designate any Subsidiary of the Company (including any newly acquired or newly formed Subsidiary or a Person becoming a Subsidiary through merger or consolidation or Investment therein) to be an Unrestricted Subsidiary only if:

(1) such Subsidiary or any of its Subsidiaries does not own any Capital Stock or Indebtedness of or have any Investment in, or own or hold any Lien on any property of, any other Subsidiary of the Company which is not a Subsidiary of the Subsidiary to be so designated or otherwise an Unrestricted Subsidiary;

(2) all the Indebtedness of such Subsidiary and its Subsidiaries shall, at the date of designation, and shall at all times thereafter, consist of Non-Recourse Debt;

(3) such designation and the Investment of the Company in such Subsidiary complies with *Section 3.4*;

(4) such Subsidiary, either alone or in the aggregate with all other Unrestricted Subsidiaries, does not operate, directly or indirectly, all or substantially all of the business of the Company and its Subsidiaries;

(5) such Subsidiary is a Person with respect to which neither the Company nor any of its Restricted Subsidiaries has any direct or indirect obligation:

(a) to subscribe for additional Capital Stock of such Person; or

(b) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results; and

(6) on the date such Subsidiary is designated an Unrestricted Subsidiary, such Subsidiary is not a party to any agreement, contract, arrangement or understanding with the Company or any Restricted Subsidiary with terms substantially less favorable to the Company than those that might have been obtained from Persons who are not Affiliates of the Company.

Any such designation by the Board of Directors of the Company shall be evidenced to the Trustee by filing with the Trustee a resolution of the Board of Directors of the Company giving effect to such designation and an Officers' Certificate certifying that such designation complies with the foregoing conditions. If, at any time, any Unrestricted Subsidiary would fail to meet the foregoing requirements as an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of this Indenture and any Indebtedness of such Subsidiary shall be deemed to be Incurred as of such date.

The Board of Directors of the Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that immediately after giving effect to such designation, no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof and the Company could Incur at least $1.00 of additional Indebtedness under the first paragraph of *Section 3.3* on a pro forma basis taking into account such designation.

"*U.S. Government Obligations*" means securities that are (a) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged or (b) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depositary receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depositary receipt.

"*Voting Stock*" of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors, managers or trustees, as applicable.

"*Wholly Owned Subsidiary*" means a Restricted Subsidiary, all of the Capital Stock of which (other than directors' qualifying shares) is owned by the Company or another Wholly Owned Subsidiary.

Other Definitions.

Term	Defined in Section
"Additional Interest Notice"	3.21
"Additional Notes"	Recitals
"Additional Restricted Notes"	2.1(b)
"Affiliate Transaction"	3.9(a)
"Agent Members"	2.1(e)
"Asset Disposition Offer"	3.8(b)
"Asset Disposition Offer Amount"	3.8(c)
"Asset Disposition Offer Period"	3.8(c)
"Asset Disposition Purchase Date"	3.8(c)
"Authenticating Agent"	2.2
"Change of Control Offer"	3.10(b)
"Change of Control Payment"	3.10(b)
"Change of Control Payment Date"	3.10(b)
"Company Order"	2.2
"covenant defeasance option"	8.1(b)
"Event of Default"	6.1
"Exchange Global Note"	2.1(b)
"Exchange Notes"	Recitals
"Excess Proceeds"	3.8(b)
"Global Notes"	2.1(b)
"IAI"	2.1(b)
"Initial Notes"	Recitals
"Institutional Accredited Investor Global Note"	2.1(b)
"Institutional Accredited Investor Notes"	2.1(b)
"legal defeasance option"	8.1(b)
"Obligations"	10.1
"Pari Passu Notes"	3.8(b)
"Paying Agent"	2.3
"Permanent Regulation S Global Note"	2.1(b)

"Permitted Holdings Payments"	3.4(b)
"Private Placement Legend"	2.1(d)
"Redemption Date"	5.3
"Registrar"	2.3
"Regulation S"	2.1(b)
"Regulation S Global Note"	2.1(b)
"Regulation S Legend"	2.1(d)
"Regulation S Notes"	2.1(b)
"Resale Restriction Termination Date"	2.6(a)
"Restricted Payment"	3.4(a)
"Restricted Period"	2.1(b)
"Rule 144A Global Note"	2.1(b)
"Rule 144A Note"	2.1(b)
"Notes"	Recitals
"Series B Global Note"	2.1(b)
"Special Interest Payment Date"	2.14(a)
"Special Record Date"	2.14(a)
"Temporary Regulation S Global Note"	2.1(b)

SECTION 1.2. *Incorporation by Reference of Trust Indenture Act.* This Indenture is subject to the mandatory provisions of the TIA which are incorporated by reference in and made a part of this Indenture. The following TIA terms have the following meaning:

"Commission" means the SEC.

"indenture notes" means the Notes.

"indenture security holder" means a Noteholder.

"indenture to be qualified" means this Indenture.

"indenture trustee" or "institutional trustee" means the Trustee.

"obligor" on the indenture securities means the Company and any other obligor on the indenture securities.

All other TIA terms used in this Indenture that are defined by the TIA, defined by the TIA reference to another statute or defined by SEC rule have the meanings assigned to them by such definitions.

SECTION 1.3. *Rules of Construction.* Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) "or" is not exclusive;

(4) "including" means including without limitation;

(5) words in the singular include the plural and words in the plural include the singular;

(6) unsecured Indebtedness shall not be deemed to be subordinate or junior to secured Indebtedness merely by virtue of its nature as unsecured Indebtedness;

(7) the principal amount of any noninterest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP;

(8) the principal amount of any Preferred Stock shall be (i) the maximum liquidation value of such Preferred Stock or (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock, whichever is greater; and

(9) "$" and "U.S. dollars" each refer to United States dollars, or such other money of the United States of America that at the time of payment is legal tender for payment of public and private debts.

ARTICLE II

The Notes

SECTION 2.1. *Form, Dating and Terms.* (a) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is unlimited. The Initial Notes issued on the date hereof will be in an aggregate principal amount of $175,000,000. In addition, the Company may issue, from time to time in accordance with the provisions of this Indenture, including, without limitation, *Section 3.3(a)* hereof, Additional Notes and Exchange Notes. Furthermore, Notes may be authenticated and delivered upon registration or transfer, or in lieu of, other Notes pursuant to *Section 2.6*, *2.10*, *2.12* or *9.5* or in connection with an Asset Disposition Offer pursuant to *Section 3.8* or a Change of Control Offer pursuant to *Section 3.10*.

The Initial Notes shall be known and designated as "11 1/4% Senior Notes, Series A, due 2014" of the Company. Additional Notes issued as Restricted Notes shall be known and designated as "11 1/4% Senior Notes, Series A, due 2014" of the Company. Additional Notes issued other than as Restricted Notes shall be known and designated as "11 1/4% Senior Notes, Series B, due 2014" of the Company, and Exchange Notes shall be known and designated as "11 1/4% Senior Notes, Series B, due 2014" of the Company.

With respect to any Additional Notes, the Company shall set forth in (a) a Board Resolution and (b)(i) an Officers' Certificate or (ii) one or more indentures supplemental hereto, the following information:

(i) the aggregate principal amount of such Additional Notes to be authenticated and delivered pursuant to this Indenture;

(ii) the issue price and the issue date of such Additional Notes; and

(iii) whether such Additional Notes shall be Restricted Notes issued in the form of Exhibit A hereto and/or shall be issued in the form of Exhibit B hereto.

The Initial Notes, the Additional Notes and the Exchange Notes shall be considered collectively as a single class for all purposes of this Indenture. Holders of the Initial Notes, the Additional Notes and the Exchange Notes shall vote and consent together on all matters to which such Holders are entitled to vote or consent as one class, and none of the Holders of the Initial Notes, the Additional Notes or the Exchange Notes shall have the right to vote or consent as a separate class on any matter to which such Holders are entitled to vote or consent.

(b) The Initial Notes are being offered and sold by the Company pursuant to a Purchase Agreement, dated March 3, 2006, among WS Midway Acquisition Sub, Inc., a Missouri corporation (to be merged with and into the Company) and J.P. Morgan Securities Inc., as initial purchaser, as amended by the Joinder Agreement, dated as of March 8, 2006 executed by the Company and each of the Guarantors. The Initial Notes and any Additional Notes (if issued as Restricted Notes) ("*Additional Restricted Notes*") shall be resold initially only to (A) QIBs and (B) Persons other than U.S. Persons (as defined in Regulation S under the Securities Act ("*Regulation S*")) in reliance on Regulation S. Such Initial Notes and Additional Restricted Notes may thereafter be transferred to, among others, QIBs, purchasers in reliance on Regulation S and institutional "accredited investors" (as defined in Rules 501(a)(1), (2), (3) and (7) under the Securities Act) who are not QIBs ("*IAIs*") in accordance with Rule 501 of the Securities Act in accordance with the procedure described herein. Additional Notes offered after the date hereof may be offered and sold by the Company from time to time pursuant to one or more purchase agreements in accordance with applicable law.

Initial Notes and Additional Restricted Notes offered and sold to QIBs in the United States of America in reliance on Rule 144A (the "*Rule 144A Notes*") shall be issued in the form of a permanent global Note substantially in the form of Exhibit A, which is hereby incorporated by reference and made a part of this Indenture, including appropriate legends as set forth in *Section 2.1(d)* (the "*Rule 144A Global Note*"), deposited with the Notes Custodian, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The Rule 144A Global Note may be represented by more than one certificate, if so required by the Depositary's rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Rule 144A Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee, as hereinafter provided.

Initial Notes and any Additional Restricted Notes offered and sold outside the United States of America (the "*Regulation S Notes*") in reliance on Regulation S shall initially be issued in the form of a temporary global security (the "*Temporary Regulation S Global Note*"), without interest coupons. Beneficial interests in the Temporary Regulation S Global Note will be exchanged for beneficial interests in a corresponding permanent global Note, without interest coupons, substantially in the form of Exhibit A including appropriate legends as set forth in *Section 2.1(d)* (the "*Permanent S Global Note*" and, together with the Temporary Regulation S Global Note, each a "*Regulation S Global Note*") within a reasonable period after the expiration of the Restricted Period (as defined below) upon delivery of the certification contemplated by *Section 2.7*. Each Regulation S Global Note shall be deposited upon issuance with the Notes Custodian in the manner described in this *Article II* for credit by the Depositary to the respective accounts of the purchasers (or to such other accounts as they may direct), including, but not limited to, accounts at Euroclear or Clearstream. Prior to the 40th day after the later of the commencement of the offering of the Initial Securities and the Issue Date (such period through and including such 40th day, the "*Restricted Period*"), interests in the Temporary Regulation S Global Note may only be transferred to non-U.S. persons pursuant to Regulation S, unless exchanged for interests in a Global Note in accordance with the transfer and certification requirements described herein.

Investors may hold their interests in the Regulation S Global Note directly through Euroclear or Clearstream, if they are participants in such systems, or indirectly through organizations that are participants in such systems. Investors may also hold such interests through organizations other than Euroclear or Clearstream that are participants in the Depositary's system. If interests in the Regulation S Global Note are held through Euroclear or Clearstream, Euroclear and Clearstream shall hold such interests in the Regulation S Global Note through the Depositary on behalf of their participants through customers' securities accounts in their respective names on the books of their respective depositaries. Such depositaries, in turn, shall hold such interests in the applicable Regulation S Global Note in customers' securities accounts in the depositaries' names on the books of the Depositary. The Regulation S Global Note may be represented by more than one certificate, if so required by the Depositary's rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Regulation S Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee, and the Depositary or its nominee, as hereinafter provided.

Initial Notes and any Additional Restricted Notes resold to IAIs (the "*Institutional Accredited Investor Notes*") in the United States of America shall be issued in the form of a permanent global Note substantially in the form of Exhibit A including appropriate legends as set forth in *Section 2.1(d)* (the "*Institutional Accredited Investor Global Note*") deposited with the Notes Custodian, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The Institutional Accredited Investor Global Note may be represented by more than one certificate, if so required by the Depositary's rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Institutional Accredited Investor Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary, as hereinafter provided.

Exchange Notes exchanged for interests in the Rule 144A Note, the Regulation S Note and the Institutional Accredited Investor Note, if any, as the case may be, shall be issued in the form of a permanent global Note substantially in the form of Exhibit B hereto, which is hereby incorporated by reference and made a part of this Indenture, deposited with the Notes Custodian as hereinafter provided, including the appropriate legend set forth in *Section 2.1(d)* hereof (the "*Exchange Global Note*"). The Exchange Global Note may be represented by more than one certificate, if so required by the Depositary's rules regarding the maximum principal amount to be represented by a single certificate.

Any Additional Notes issued other than as Restricted Notes shall be issued in the form of one or more permanent global Notes substantially in the form of Exhibit B (each, a "*Series B Global Note*") deposited with the Notes Custodian, duly executed by the Company and authenticated by the Trustee as hereinafter provided. A Series B Global Note may be represented by more than one certificate, if so required by the Depositary's rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Series B Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee, as hereinafter provided.

The Rule 144A Global Note, the Regulation S Global Note, the Institutional Accredited Investor Global Note, if any, the Exchange Global Note, and the Series B Global Note are sometimes collectively herein referred to as the "*Global Notes*."

The principal of (and premium, if any) and interest on the Notes shall be payable at the office or agency of the Company maintained for such purpose in The City of New York, or at such other office or agency of the Company as may be maintained for such purpose pursuant to *Section 2.3*; *provided, however*, that, at the option of the Company, each installment of interest may be paid by (i) check mailed to addresses of the Persons entitled thereto as such addresses shall appear on the Note Register or (ii) wire transfer or to an account located in the United States maintained by the payee. Payments in respect of Notes represented by a Global Note (including principal, premium and interest) shall be made by wire transfer of immediately available funds to the accounts specified by the Depositary. Payments in respect of Notes represented by Definitive Notes (including principal, premium, if any, and interest) held by a Holder of at least $1,000,000 aggregate principal amount of Notes represented by Definitive Notes shall be made by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 15 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept).

The Exchange Notes shall be in the form of *Exhibit B*. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage, in addition to those set forth on *Exhibit A* and *Exhibit B* and in *Section 2.1(d)* . The Company shall approve the forms of the Notes and any notation, endorsement or legend on them. Any such notation, endorsement or legend shall be furnished to the Trustee in writing. Each Note shall be dated the date of its authentication. The terms of the Notes set forth in *Exhibit A* and *Exhibit B* are part of the terms of this Indenture and, to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to be bound by such terms.

(c) *Denominations*. The Notes shall be issuable only in fully registered form, without coupons, and only in denominations of $1,000 and integral multiples of $1,000.

(d) *Restrictive Legends*. Unless and until (i) an Initial Note or an Additional Note issued as a Restricted Note is sold under an effective registration statement or (ii) an Initial Note or an Additional Note issued as a Restricted Note is exchanged for an Exchange Note in connection with an effective registration statement, in each case pursuant to the Registration Rights Agreement,

(A) the Rule 144A Global Note and the Institutional Accredited Investor Global Note shall (x) be subject to the restrictions on transfer set forth in *Section 2.6* (including those set forth in the legend below) and (y) bear the following legend (the "*Private Placement Legend*") on the face thereof:

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE ISSUER OR ANY AFFILIATE OF THE ISSUER WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY), ONLY (A) TO THE ISSUER, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED

EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, (E) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS AN INSTITUTIONAL ACCREDITED INVESTOR ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF THE SECURITIES OF $250,000, FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO OR FOR OFFER OR SALE IN CONNECTION WITH ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D), (E) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.

BY ITS ACQUISITION OF THIS SECURITY THE HOLDER HEREOF WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (I) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE AND HOLD THIS SECURITY CONSTITUTES THE ASSETS OF AN EMPLOYEE BENEFIT PLAN THAT IS SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), PLAN, ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), OR PROVISIONS UNDER ANY FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE ("SIMILAR LAWS"), OR OF ANY ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE "PLAN ASSETS" OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT, OR (II) THE ACQUISITION AND HOLDING OF THIS SECURITY WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION
406 OF ERISA OR SECTION 4975 OF THE CODE OR A VIOLATION UNDER ANY APPLICABLE SIMILAR LAW."

(B) the Regulation S Global Note shall (x) be subject to the restrictions on transfer set forth in *Section 2.6* (including those set forth in the legend below) and (y) bear the following legend (the "*Regulation S Legend*") on the face thereof:

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT ("REGULATION S"), (2) BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS 40 DAYS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE ISSUER OR ANY AFFILIATE OF THE ISSUER WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY), ONLY (A) TO THE ISSUER, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, (E) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS AN INSTITUTIONAL ACCREDITED INVESTOR ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF THE SECURITIES OF $250,000, FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO OR FOR OFFER OR SALE IN CONNECTION WITH ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D), (E) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED AFTER 40 CONSECUTIVE DAYS BEGINNING ON AND INCLUDING THE LATER OF (A) THE DAY ON WHICH THE SECURITIES ARE OFFERED TO PERSONS OTHER THAN DISTRIBUTORS (AS DEFINED IN REGULATION S) AND (B) THE DATE OF THE CLOSING OF THE ORIGINAL OFFERING. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.

BY ITS ACQUISITION OF THIS SECURITY THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT.

BY ITS ACQUISITION OF THIS SECURITY THE HOLDER HEREOF WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (I) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE AND HOLD THIS SECURITY CONSTITUTES THE ASSETS OF AN EMPLOYEE BENEFIT PLAN THAT IS SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), PLAN, ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), OR PROVISIONS UNDER ANY FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE ("SIMILAR LAWS"), OR OF ANY ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE "PLAN ASSETS" OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT, OR (II) THE ACQUISITION AND HOLDING OF THIS SECURITY WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A VIOLATION UNDER ANY APPLICABLE SIMILAR LAW."

(C) Each Global Note, whether or not an Initial Note, shall bear the following legend on the face thereof:

"UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO DTC, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF."

(e) *Book-Entry Provisions*. (i) This *Section 2.1(e)* shall apply only to Global Notes deposited with the Notes Custodian.

(ii) Each Global Note initially shall (x) be registered in the name of the Depositary for such Global Note or the nominee of such Depositary, (y) be delivered to the Notes Custodian for such Depositary and (z) bear legends as set forth in *Section 2.1(d)*.

(iii) Members of, or participants in, the Depositary ("*Agent Members*") shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Depositary or by the Trustee as the custodian of the Depositary or under such Global Note, and the Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices of the Depositary governing the exercise of the rights of a Holder of a beneficial interest in any Global Note.

(iv) The registered Holder of a Global Note may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Notes.

(v) In connection with any transfer of a portion of the beneficial interest in a Global Note pursuant to subsection (f) of this *Section 2.1* to beneficial owners who are required to hold Definitive Notes, the Trustee shall reflect on its books and records the date and a decrease in the principal amount of such Global Note in an amount equal to the principal amount of the beneficial interest in the Global Note to be transferred, and the Company shall execute, and the Trustee shall authenticate and deliver, one or more Definitive Notes of like tenor and amount.

(vi) In connection with the transfer of an entire Global Note to beneficial owners pursuant to subsection (e) of this Section, such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depositary in exchange for its beneficial interest in such Global Note, an equal aggregate principal amount of Definitive Notes of authorized denominations.

(vii) Any Holder of a Global Note shall, by acceptance of such Global Note, agree that transfers of beneficial interests in such Global Note may be effected only through a book-entry system maintained by (a) the Holder of such Global Note (or its agent) or (b) any Holder of a beneficial interest in such Global Note, and that ownership of a beneficial interest in such Global Note shall be required to be reflected in a book entry.

(f) *Definitive Notes*. Except as provided below, owners of beneficial interests in Global Notes shall not be entitled to receive Definitive Notes. If required to do so pursuant to any applicable law or regulation, beneficial owners may obtain Definitive Notes in exchange for their beneficial interests in a Global Note upon written request in accordance with the Depositary's and the Registrar's procedures. In addition, Definitive Notes shall be delivered to all beneficial owners in exchange for their beneficial interests in a Global Note if (i) the Depositary notifies the Company that it is unwilling or unable to continue as depositary for such Global Note or the Depositary ceases to be a clearing agency registered under the Exchange Act, at a time when the Depositary is required to be so registered in order to act as Depositary, and in each case a successor depositary is not appointed by the Company within 90 days of such notice or, (ii) the Company executes and delivers to the Trustee and Registrar an Officers' Certificate stating that such Global Note shall be so exchangeable or (iii) an Event of Default has occurred and is continuing and the Registrar has received a request from the Depositary.

(g) Any Definitive Note delivered in exchange for an interest in a Global Note pursuant to *Section 2.1(e)(v)* or *(vi)* shall, except as otherwise provided by paragraph (c) of *Section 2.6*, bear the applicable legend regarding transfer restrictions applicable to the Definitive Note set forth in *Section 2.1(d)*.

(h) In connection with the exchange of a portion of a Definitive Note for a beneficial interest in a Global Note, the Trustee shall cancel such Definitive Note, and the Company shall execute, and the Trustee shall authenticate and deliver, to the transferring Holder a new Definitive Note representing the principal amount not so transferred and the relevant Global Note shall be increased by an adjustment made on the records of the Trustee and the Depositary.

SECTION 2.2. *Execution and Authentication.* Two Officers shall sign the Notes for the Company by manual or facsimile signature. If an Officer whose signature is on a Note no longer holds that office at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

A Note shall not be valid until an authorized signatory of the Trustee manually authenticates the Note. The signature of the Trustee on a Note shall be conclusive evidence that such Note has been duly and validly authenticated and issued under this Indenture. A Note shall be dated the date of its authentication.

At any time and from time to time after the execution and delivery of this Indenture, the Trustee shall authenticate and make available for delivery: (1) Initial Notes for original issue on the Issue Date in an aggregate principal amount of $175,000,000, (2) subject to the terms of this Indenture, Additional Notes for original issue in an unlimited principal amount and (3) Exchange Notes for issue only in an Exchange Offer pursuant to a Registration Rights Agreement or upon resale under an effective Shelf Registration Statement, and only in exchange for Initial Notes or Additional Notes, as the case may be, of an equal principal amount, in each case upon a written order of the Company signed by two Officers or by an Officer and either a Treasurer or an Assistant Secretary of the Company (the "*Company Order*"). Such Company Order shall specify the amount of the Notes to be authenticated and the date on which the original issue of Notes is to be authenticated and whether the Notes are to be Initial Notes, Additional Notes or Exchange Notes.

The Trustee may (at the expense of the Company) appoint an agent (the "*Authenticating Agent*") reasonably acceptable to the Company to authenticate the Notes. Unless limited by the terms of such appointment, any such Authenticating Agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent.

In case the Company, pursuant to *Article IV* shall be consolidated or merged with or into any other Person or shall convey, transfer, lease or otherwise dispose of its properties and assets substantially as an entirety to any Person, and the successor Person resulting from such consolidation, or surviving such merger, or into which the Company shall have been merged, or the Person which shall have received a conveyance, transfer, lease or other disposition as aforesaid, shall have executed an indenture supplemental hereto with the Trustee pursuant to *Article IV*, any of the Notes authenticated or delivered prior to such consolidation, merger, conveyance, transfer, lease or other disposition may, from time to time, at the request of the successor Person, be exchanged for other Notes executed in the name of the successor Person with such changes in phraseology and form as may be appropriate, but otherwise in substance of like tenor as the Notes surrendered for such exchange and of like principal amount; and the Trustee, upon Company Order of the successor Person, shall authenticate and deliver Notes as specified in such order for the purpose of such exchange. If Notes shall at any time be authenticated and delivered in any new name of a successor Person pursuant to this *Section 2.2* in exchange or substitution for or upon registration of transfer of any Notes, such successor Person, at the option of the Holders but without expense to them, shall provide for the exchange of all Notes at the time outstanding for Notes authenticated and delivered in such new name.

SECTION 2.3. *Registrar and Paying Agent.* The Company shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange (the "*Registrar*") and an office or agency where Notes may be presented for payment (the "*Paying Agent*"). The Company shall cause each of the Registrar and the Paying Agent to maintain an office or agency in the Borough of Manhattan, The City of New York. The Registrar shall keep a register of the Notes and of their transfer and exchange (the "*Note Register*"). The Company may have one registrar and one or more additional paying agents. The term "Paying Agent" includes any additional paying agent.

The Company shall enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture, which shall incorporate the terms of the TIA. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee in writing of the name and address of each such agent. If the Company fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to *Section 7.7*. The Company or any of its Wholly Owned Subsidiaries that is a Domestic Subsidiary may act as Paying Agent, Registrar or transfer agent.

The Company initially appoints the Trustee as Notes Custodian, Registrar and Paying Agent for the Notes. The Company may remove any Notes Custodian, Registrar or Paying Agent upon written notice to such Notes Custodian, Registrar or Paying Agent and to the Trustee; *provided, however,* that no such removal shall become effective until (i) acceptance of any appointment by a successor as evidenced by an appropriate agreement entered into by the Company and such successor Notes Custodian, Registrar or Paying Agent, as the case may be, and delivered to the Trustee or (ii) notification to the Trustee that the Trustee shall serve as Notes Custodian, Registrar or Paying Agent until the appointment of a successor in accordance with clause (i) above. The Notes Custodian, Registrar or Paying Agent may resign at any time upon written notice to the Company and the Trustee.

SECTION 2.4. *Paying Agent To Hold Money in Trust.* By at least 10:00 a.m. (New York City time) on the date on which any principal of (premium, if any) or interest on any Note is due and payable, the Company shall irrevocably deposit with the Paying Agent a sum sufficient in immediately available funds to pay such principal (premium, if any) or interest when due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that such Paying Agent shall hold in trust for the benefit of the Holders or the Trustee all money held by such Paying Agent for the payment of principal of or interest on the Notes and shall notify the Trustee in writing of any default by the Company or any Guarantor in making any such payment. If the Company or a Subsidiary acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent (other than the Trustee) to pay all money held by it to the Trustee and to account for any funds disbursed by such Paying Agent. Upon complying with this Section, the Paying Agent (if other than the Company or a Subsidiary) shall have no further liability for the money delivered to the Trustee. Upon any bankruptcy, reorganization or similar proceeding with respect to the Company, the Trustee shall serve as Paying Agent for the Notes.

SECTION 2.5. *Holder Lists.* The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar or to the extent otherwise required under the TIA, the Company, on its own behalf and on behalf of each Guarantor, shall furnish to the Trustee, in writing at least seven Business Days before each interest payment date and at such other times as the Trustee may request in writing within 15 days, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders and the Company shall otherwise comply with TIA § 312(a).

SECTION 2.6. *Transfer and Exchange.*

(a) The following provisions shall apply with respect to any proposed transfer of a Rule 144A Note or an Institutional Accredited Investor Note prior to the date which is two years after the later of the date of its original issue and the last date on which the Company or any Affiliate of the Company was the owner of such Notes (or any predecessor thereto) (the "*Resale Restriction Termination Date*"):

(i) a transfer of a Rule 144A Note or an Institutional Accredited Investor Note or a beneficial interest therein to a QIB shall be made upon the representation of the transferee in the form as set forth on the reverse of the Note that it is purchasing the Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as it has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A;

(ii) a transfer of a Rule 144A Note or an Institutional Accredited Investor Note or a beneficial interest therein to an IAI shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in *Section 2.8* hereof from the proposed transferee and, if requested by the Company or the Trustee, the delivery of an opinion of counsel, certification and/or other information satisfactory to each of them; and

(iii) a transfer of a Rule 144A Note or an Institutional Accredited Investor Note or a beneficial interest therein to a Non-U.S. Person shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in *Section 2.9* hereof from the proposed transferee and, if requested by the Company or the Trustee, the delivery of an opinion of counsel, certification and/or other information satisfactory to each of them.

(b) The following provisions shall apply with respect to any proposed transfer of a Regulation S Note prior to the expiration of the Restricted Period:

(i) a transfer of a Regulation S Note or a beneficial interest therein to a QIB shall be made upon the representation of the transferee, in the form of assignment on the reverse of the certificate, that it is purchasing the Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A;

(ii) a transfer of a Regulation S Note or a beneficial interest therein to an IAI shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in *Section 2.8* hereof from the proposed transferee and, if requested by the Company or the Trustee, the delivery of an opinion of counsel, certification and/or other information satisfactory to each of them; and

(iii) a transfer of a Regulation S Note or a beneficial interest therein to a Non-U.S. Person shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in *Section 2.9* hereof from the proposed transferee and, if requested by the Company or the Trustee, receipt by the Trustee or its agent of an opinion of counsel, certification and/or other information satisfactory to each of them.

After the expiration of the Restricted Period, interests in the Regulation S Note may be transferred in accordance with applicable law without requiring the certification set forth in *Section 2.9* or any additional certification.

(c) *Restricted Notes Legend*. Upon the transfer, exchange or replacement of Notes not bearing a Restricted Notes Legend, the Registrar shall deliver Notes that do not bear a Restricted Notes Legend. Upon the transfer, exchange or replacement of Notes bearing a Restricted Notes Legend, the Registrar shall deliver only Notes that bear such Restricted Notes Legend unless (i) Initial Notes are being exchanged for Exchange Notes in a Exchange Offer in which case the Exchange Notes shall not bear a Restricted Notes Legend, (ii) an Initial Note is being transferred pursuant to an effective registration statement or (iii) there is delivered to the Registrar an Opinion of Counsel to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act. Any Additional Notes sold in a registered offering shall not be required to bear the Restricted Notes Legend.

(d) The Registrar shall retain copies of all letters, notices and other written communications received pursuant to *Section 2.1* or this *Section 2.6* in accordance with its records retention policy. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

(e) *Obligations with Respect to Transfers and Exchanges of Notes*.

(i) To permit registrations of transfers and exchanges, the Company shall, subject to the other terms and conditions of this *Article II*, execute and the Trustee shall authenticate Definitive Notes and Global Notes at the Registrar's request.

(ii) No service charge shall be made to a Holder for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charges payable upon exchange or transfer pursuant to *Sections 3.8*, *3.10* or *9.5*).

(iii) The Registrar shall not be required to register the transfer of or exchange of any Note for a period beginning (1) 15 Business Days before the mailing of a notice of an offer to repurchase Notes and ending at the close of business on the day of such mailing or (2) 15 Business Days before an interest payment date and ending on such interest payment date.

(iv) Prior to the due presentation for registration of transfer of any Note, the Company, the Trustee, the Paying Agent or the Registrar may deem and treat the Person in whose name a Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of (premium, if any) and interest on such Note and for all other purposes whatsoever, whether or not such Note is overdue, and none of the Company, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

(v) All Notes issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Notes surrendered upon such transfer or exchange.

(f) *No Obligation of the Trustee*. (i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Note, a member of, or a participant in, the Depositary or other Person with respect to the accuracy of the records of the Depositary or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depositary) of any notice or the payment of any amount or delivery of any Notes (or other security or property) under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders in respect of the Notes shall be given or made only to or upon the order of the registered Holders (which shall be the Depositary or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Depositary subject to the applicable rules and procedures of the Depositary. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its members, participants and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depositary participants, members or beneficial owners in any Global Note) other than, if the Trustee has received prior notice of a transfer, to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

SECTION 2.7. *Form of Certificate to be Delivered upon Termination of Restricted Period.*

[Date]

Dave & Busters, Inc.
2481 Mañana Drive
Dallas, Texas 75220
Attention: Chief Financial Officer

and

The Bank of New York Trust Company, N.A.
Plaza of the Americas
600 North Pearl Street, Suite 420
Dallas, Texas 75201

Re: Dave & Busters, Inc.
$11^{1}/_{4}$% Senior Notes due 2014 (the "Notes")

Ladies and Gentlemen:

This letter relates to Securities represented by a temporary global note (the "*Temporary Regulation S Global Note*"). Pursuant to Section 2.1 of the Indenture dated as of March 8, 2006 relating to the Notes (the "Indenture"), we hereby certify that the persons who are the beneficial owners of $[ ] principal amount of Notes represented by the Temporary Regulation S Global Note are persons outside the United States to whom beneficial interests in such Securities could be transferred in accordance with Rule 904 of Regulation S promulgated under the Securities Act of 1933, as amended. Accordingly, you are hereby requested to issue a Permanent Regulation S Global Note representing the undersigned's interest in the principal amount of Securities represented by the Temporary Regulation S Global Note, all in the manner provided by the Indenture.

You and the Company are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby. Terms used in this letter have the meanings set forth in Regulation S.

Very truly yours,

[Name of Transferor]

By: _____

Authorized Signature

SECTION 2.8. *Form of Certificate to be Delivered in Connection with Transfers to Institutional Accredited Investors.*

[Date]

Dave & Busters, Inc.
2481 Mañana Drive
Dallas, Texas 75220
Attention: Chief Financial Officer

and

The Bank of New York Trust Company, N.A.
Plaza of the Americas
600 North Pearl Street, Suite 420
Dallas, Texas 75201

Re: Dave & Busters, Inc.
$11^1/4\%$ Senior Notes due 2014 (the "Notes")

Dear Sirs:

This certificate is delivered to request a transfer of $ principal amount of the Notes of Dave & Busters, Inc. (the "Company").

Upon transfer, the Notes would be registered in the name of the new beneficial owner as follows:

Name: _____

Address: _____

Taxpayer ID Number: _____

The undersigned represents and warrants to you that:

1. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended (the "Securities Act")) purchasing for our own account or for the account of such an institutional "accredited investor" at least $250,000 principal amount of the Notes, and we are acquiring the Notes not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act. We have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risk of our investment in the Notes and we invest in or purchase securities similar to the Notes in the normal course of our business. We and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

2. We understand that the Notes have not been registered under the Securities Act and, unless so registered, may not be sold except as permitted in the following sentence. We agree on our own behalf and on behalf of any investor account for which we are purchasing Notes to offer, sell or otherwise transfer such Notes prior to the date that is two years after the later of the date of original issue and the last date on which the Company or any affiliate of the Company was the owner of such Notes (or any predecessor thereto) (the "Resale Restriction Termination Date") only (a) to the Company, (b) pursuant to a registration statement which has been declared effective under the Securities Act, (c) in a transaction complying with the requirements of Rule 144A under the Securities Act ("Rule 144A"), to a person we reasonably believe is a qualified institutional buyer under Rule 144A (a "QIB") that purchases for its own account or for the account of a QIB and to whom notice is given that the transfer is being made in reliance on Rule 144A, (d) pursuant to offers and sales that occur outside the United States within the meaning of Regulation S under the Securities Act, (e) to an institutional "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act that is purchasing for its own account or for the account of such an institutional "accredited investor," in each case in a minimum principal amount of Notes of $250,000 or (f) pursuant to any other available exemption from the registration requirements of the Securities Act, subject in each of the foregoing cases to any requirement of law that the disposition of our property or the property of such investor account or accounts be at all times within our or their control and in compliance with any applicable state securities laws. The foregoing restrictions on resale shall not apply subsequent to the Resale Restriction Termination Date. If any resale or other transfer of the Notes is proposed to be made pursuant to clause (e) above prior to the Resale Restriction Termination Date, the transferor shall deliver a letter from the transferee substantially in the form of this letter to the Company and the Trustee, which shall provide, among other things, that the transferee is an institutional "accredited investor" (within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act) and that it is acquiring such Notes for investment purposes and not for distribution in violation of the Securities Act. Each purchaser acknowledges that the Company and the Trustee reserve the right prior to any offer, sale or other transfer prior to the Resale Termination Date of the Notes pursuant to clauses (d), (e) or (f) above to require the delivery of an opinion of counsel, certifications and/or other information satisfactory to the Company and the Trustee.

TRANSFEREE: _____

BY: _____

SECTION 2.9. *Form of Certificate to be Delivered in Connection with Transfers Pursuant to Regulation S.*

[Date]

Dave & Busters, Inc.
2481 Mañana Drive
Dallas, Texas 75220
Attention: Chief Financial Officer

and

The Bank of New York Trust Company, N.A.
Plaza of the Americas
600 North Pearl Street, Suite 420
Dallas, Texas 75201

Re: Dave & Busters, Inc.
11 1/4% Senior Notes due 2014 (the "Notes")

Ladies and Gentlemen:

In connection with our proposed sale of $ aggregate principal amount of the Notes, we confirm that such sale has been effected pursuant to and in accordance with Regulation S under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, we represent that:

(a) the offer of the Notes was not made to a person in the United States;

(b) either (i) at the time the buy order was originated, the transferee was outside the United States or we and any person acting on our behalf reasonably believed that the transferee was outside the United States or (ii) the transaction was executed in, on or through the facilities of a designated off-shore securities market and neither we nor any person acting on our behalf knows that the transaction has been pre-arranged with a buyer in the United States;

(c) no directed selling efforts have been made in the United States in contravention of the requirements of Rule 903(a)(2) or Rule 904(a)(2) of Regulation S, as applicable; and

(d) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act.

In addition, if the sale is made during a restricted period and the provisions of Rule 903(b)(2) or Rule 904(b)(1) of Regulation S are applicable thereto, we confirm that such sale has been made in accordance with the applicable provisions of Rule 903(b)(2) or Rule 904(b)(1), as the case may be.

You and the Company are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby. Terms used in this certificate have the meanings set forth in Regulation S.

Very truly yours,

[Name of Transferor]

By:

Authorized Signature

SECTION 2.10. *Mutilated, Destroyed, Lost or Stolen Notes.* If a mutilated Note is surrendered to the Registrar or if the Holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, the Company shall issue and the Trustee, upon Company Order, shall authenticate a replacement Note. The Holder shall meet the requirements of Section 8-405 of the Uniform Commercial Code, such that the Holder (a) notifies the Company and the Trustee within a reasonable time after such Holder has notice of such loss, destruction or wrongful taking and the Registrar has not registered a transfer prior to receiving such notification, (b) makes such request to the Company prior to the Company having notice that the Note has been acquired by a protected purchaser as defined in Section 8-303 of the Uniform Commercial Code (a "protected purchaser") and (c) satisfies any other reasonable requirements of the Company and the Trustee. Such Holder shall furnish an indemnity bond sufficient in the judgment of the Company and the Trustee to protect the Company, the Trustee, the Paying Agent and the Registrar from any loss which any of them may suffer if a Note is replaced, then, in the absence of notice to the Company, any Guarantor or the Trustee that such Note has been acquired by a protected purchaser, the Company shall execute and upon Company Order the Trustee shall authenticate and deliver, in exchange for any such mutilated Note or in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Note, pay such Note.

Upon the issuance of any new Note under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) in connection therewith.

Every new Note issued pursuant to this Section in lieu of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company, any Guarantor and any other obligor upon the Notes, whether or not the mutilated, destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

SECTION 2.11. *Outstanding Notes.* Notes outstanding at any time are all Notes authenticated by the Trustee except for those canceled by it, those paid pursuant to *Section 2.10*, those delivered to it for cancellation and those described in this Section as not outstanding. A Note does not cease to be outstanding in the event the Company or an Affiliate of the Company holds the Note except that the Company or an Affiliate of the Company shall not obtain voting rights with respect to such Note.

If a Note is replaced pursuant to *Section 2.10*, it ceases to be outstanding unless the Trustee and the Company receive proof satisfactory to them that the replaced Note is held by a bona fide purchaser.

If the Paying Agent segregates and holds in trust, in accordance with this Indenture, on a maturity date money sufficient to pay all principal and interest payable on that date with respect to the Notes maturing and the Paying Agent is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture, then on and after that date such Notes cease to be outstanding and interest on them ceases to accrue.

SECTION 2.12. *Temporary Notes.* In the event that Definitive Notes are to be issued under the terms of this Indenture, until such Definitive Notes are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of Definitive Notes but may have variations that the Company considers appropriate for temporary Notes. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate Definitive Notes. After the preparation of Definitive Notes, the temporary Notes shall be exchangeable for Definitive Notes upon surrender of the temporary Notes at any office or agency maintained by the Company for that purpose and such exchange shall be without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes, the Company shall execute, and the Trustee shall authenticate and make available for delivery in exchange therefor, one or more Definitive Notes representing an equal principal amount of Notes. Until so exchanged, the Holder of temporary Notes shall in all respects be entitled to the same benefits under this Indenture as a Holder of Definitive Notes.

SECTION 2.13. *Cancellation.* The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel and return to the Company all Notes surrendered for registration of transfer, exchange, payment or cancellation. The Company may not issue new Notes to replace Notes it has paid or delivered to the Trustee for cancellation.

At such time as all beneficial interests in a Global Note have either been exchanged for Definitive Notes, transferred, redeemed, repurchased or canceled, such Global Note shall be returned by the Depositary to the Trustee for cancellation or retained and canceled by the Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for Definitive Notes, transferred in exchange for an interest in another Global Note, redeemed, repurchased or canceled, the principal amount of Notes represented by such Global Note shall be reduced and an adjustment shall be made on the Global Note and on the books and records of the Trustee (if it is then the Notes Custodian for such Global Note) with respect to such Global Note, by the Trustee or the Notes Custodian, to reflect such reduction.

SECTION 2.14. *Payment of Interest; Defaulted Interest.* Interest on any Note which is payable, and is punctually paid or duly provided for, on any interest payment date shall be paid to the Person in whose name such Note (or one or more predecessor Notes) is registered at the close of business on the regular record date for such interest at the office or agency of the Company maintained for such purpose pursuant to *Section 2.3*.

Any interest on any Note which is payable, but is not paid when the same becomes due and payable and such nonpayment continues for a period of 30 days shall forthwith cease to be payable to the Holder on the regular record date by virtue of having been such Holder, and such defaulted interest and (to the extent lawful) interest on such defaulted interest at the rate borne by the Notes (such defaulted interest and interest thereon herein collectively called "*Defaulted Interest*") shall be paid by the Company, at its election in each case, as provided in clause (a) or (b) below:

(a) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective predecessor Notes) are registered at the close of business on a Special Record Date (as defined below) for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date (not less than 30 days after such notice) of the proposed payment (the "*Special Interest Payment Date*"), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon, the Trustee shall fix a record date (the "*Special Record Date*") for the payment of such Defaulted Interest, which shall be not more than 15 days and not less than 10 days prior to the Special Interest Payment Date and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date, and in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor to be given in the manner provided for in *Section 11.2*, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor having been so given, such Defaulted Interest shall be paid on the Special Interest Payment Date to the Persons in whose names the Notes (or their respective predecessor Notes) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (b).

(b) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

SECTION 2.15. *Computation of Interest.* Interest on the Notes shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 2.16. *CUSIP Numbers.* The Company in issuing the Notes may use "CUSIP" numbers (if then generally in use). The Trustee shall not be responsible for the use of CUSIP numbers, and the Trustee makes no representation as to their correctness as printed on any Note or notice to Holders and that reliance may be placed only on the other identification numbers printed on the Notes, and any redemption shall not be affected by any defect in or omission of such CUSIP numbers. The Company shall promptly notify the Trustee in writing of any change in the CUSIP numbers.

ARTICLE III

Covenants

SECTION 3.1 *Payment of Notes.* The Company shall promptly pay the principal of and interest on the Notes on the dates and in the manner provided in the Notes and in this Indenture. Principal and interest shall be considered paid on the date due if on such date the Trustee or the Paying Agent holds in accordance with this Indenture money sufficient to pay all principal and interest then due and the Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture.

The Company shall pay interest on overdue principal at the rate specified therefor in the Notes, and it shall pay interest on overdue installments of interest at the same rate to the extent lawful.

Notwithstanding anything to the contrary contained in this Indenture, the Company may, to the extent it is required to do so by law, deduct or withhold income or other similar taxes imposed by the United States of America from principal or interest payments hereunder.

SECTION 3.2. *SEC Reports.* Notwithstanding that the Company may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, to the extent permitted by the Exchange Act, the Company shall file with the SEC, and make available to the Trustee and the Holders, the annual reports and the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) that are specified in Sections 13 and 15(d) of the Exchange Act within the time periods specified therein. In the event that the Company is not permitted to file such reports, documents and information with the SEC pursuant to the Exchange Act, the Company shall nevertheless make available such Exchange Act information (as well as the details regarding the conference call described below) to the Trustee and the Holders as if the Company were subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act within the time periods specified therein or in the relevant forms. Unless the Company is subject to the reporting requirements of the Exchange Act, the Company shall also hold a quarterly conference call for the Holders to discuss such financial information. The conference call will not be held later than three Business Days from the time the Company distributes the financial information as set forth above. The Company agrees that it shall not take any action for the purpose of causing the SEC not to accept such filings. The Company shall also comply with the other provisions of TIA § 314(a).

If the Company has designated any of its Subsidiaries as Unrestricted Subsidiaries and the Consolidated EBITDA of the Unrestricted Subsidiaries taken together exceeds 10% of the Consolidated EBITDA of the Company, then the quarterly and annual financial information required by the preceding paragraph shall include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes to the financial statements and in Management's Discussion and Analysis of Results of Operations and Financial Condition, of the financial condition and results of operations of the Company and its Restricted Subsidiaries.

In addition, the Company and the Guarantors shall make available to the Holders and to securities analysts, prospective investors, upon the request of such holders, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act so long as the Notes are not freely transferable under the Securities Act. For purposes of this covenant, the Company and the Guarantors will be deemed to have furnished the reports to the Trustee and the holders of Notes as required by this covenant if it has filed such reports with the SEC via the EDGAR filing system and such reports are publicly available.

The filing requirements set forth above for the applicable period may be satisfied by the Company prior to the commencement of the Exchange Offer or the effectiveness of the Shelf Registration Statement (each as defined in the Registration Rights Agreement) by the filing with the SEC of the exchange offer registration statement and/or shelf registration statement, and any amendments thereto, with such financial information that satisfies Regulation S-X of the Securities Act; *provided* that this paragraph shall not supersede or in any manner suspend or delay the Company's reporting obligations set forth in the first three paragraphs of this covenant, *provided, further*, that at such time the Company is not required to pay any additional interest pursuant to the Registration Rights Agreement.

In the event that (1) the rules and regulations of the SEC permit the Company and any direct or indirect parent company of the Company to report at such parent entity's level on a consolidated basis and (2) such parent entity of the Company is not engaged in any business in any material respect other than incidental to its ownership, directly or indirectly of the Capital Stock of the Company, the information and reports required by the covenant may be those of such parent company on a consolidated basis.

SECTION 3.3. *Limitation on Indebtedness.* (a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, Incur any Indebtedness (including Acquired Indebtedness); *provided, however*, that the Company and the Guarantors may Incur Indebtedness (including Acquired Indebtedness) if on the date thereof:

(1) the Consolidated Coverage Ratio for the Company and its Restricted Subsidiaries is at least 2.00 to 1.00; and

(2) no Default or Event of Default shall have occurred or be continuing or shall occur as a consequence of Incurring the Indebtedness or transactions relating to such Incurrence.

(b) The foregoing paragraph (a) shall not prohibit the Incurrence of the following Indebtedness:

(1) Indebtedness of the Company or any Guarantor Incurred pursuant to a Credit Facility in an aggregate amount up to $160.0 million less the aggregate principal amount of all principal repayments with the proceeds from Asset Dispositions utilized in accordance with clause 3(a) of *Section 3.8* that permanently reduce the commitments thereunder;

(2) (x) Guarantees by the Company or Guarantors of Indebtedness Incurred by the Company or a Guarantor in accordance with the provisions of this Indenture; *provided* that in the event such Indebtedness that is being Guaranteed is a Subordinated Obligation or a Guarantor Subordinated Obligation, then the related Guarantee shall be subordinated in right of payment to the Notes or the Subsidiary's Note Guarantee, as the case may be; and (y) Guarantees by Non-Guarantor Restricted Subsidiaries of Indebtedness Incurred by Non-Guarantor Restricted Subsidiaries in accordance with the provision of this Indenture;

(3) Indebtedness of the Company owing to and held by any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary owing to and held by the Company or any other Restricted Subsidiary; *provided, however,*

(a) if the Company is the obligor on such Indebtedness, such Indebtedness is expressly subordinated to the prior payment in full in cash of all obligations with respect to the Notes;

(b) if a Guarantor is the obligor on such Indebtedness and the Company or a Guarantor is not the obligee, such Indebtedness is subordinated in right of payment to the Note Guarantees of such Guarantor; and

(c) (i) any subsequent issuance or transfer of Capital Stock or any other event which results in any such Indebtedness being beneficially held by a Person other than the Company or a Restricted Subsidiary of the Company; and

(ii) any sale or other transfer of any such Indebtedness to a Person other than the Company or a Restricted Subsidiary of the Company

shall be deemed, in each case, to constitute an Incurrence of such Indebtedness by the Company or such Subsidiary not permitted by this clause (3), as the case may be;

(4) (a) Indebtedness represented by (a) the Notes on the Issue Date, the Note Guarantees of the Guarantors and the related Exchange Securities and Subsidiary Guarantees issued in a registered Exchange Offer pursuant to the Registration Rights Agreement, (b) any Indebtedness (other than the Indebtedness described in clauses (1), (2), (3), (6), (8), (9) and (10)) outstanding on the Issue Date and (c) any Refinancing Indebtedness Incurred in respect of any Indebtedness (including Refinancing Indebtedness) described in this clause (4) or clause (5) or Incurred pursuant to *Section 3.3(a)*;

(5) Indebtedness of a Restricted Subsidiary Incurred and outstanding on the date on which such Restricted Subsidiary was acquired by, or merged into, the Company or any Restricted Subsidiary (other than Indebtedness Incurred (a) to provide all or any portion of the funds utilized to consummate the transaction or series of related transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was otherwise acquired by the Company or (b) otherwise in connection with, or in contemplation of, such acquisition); *provided, however,* that at the time such Restricted Subsidiary is acquired by the Company, the Company would have been able to Incur $1.00 of additional Indebtedness pursuant to *Section 3.3(a)* after giving effect to the Incurrence of such Indebtedness pursuant to this clause (5);

(6) Indebtedness under Hedging Obligations that are Incurred in the ordinary course of business (and not for speculative purposes) (1) for the purpose of fixing or hedging interest rate risk with respect to any Indebtedness Incurred in accordance with this Indenture; (2) for the purpose of fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (3) for the purpose of fixing or hedging commodity price risk with respect to any commodities;

(7) the Incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness represented by Capitalized Lease Obligations, mortgage financings or purchase money obligations with respect to assets other than Capital Stock or other Investments, in each case Incurred for the purpose of financing all or any part of the purchase price or cost of construction or improvements of property used in the business of the Company or such Restricted Subsidiary, and Attributable Indebtedness, in an aggregate principal amount not to exceed the greater of (x) 3% of Consolidated Net Tangible Assets and (y) $10.0 million at any time outstanding, including all Refinancing Indebtedness Incurred to refund, defease, renew, extend, refinance or replace any Indebtedness Incurred pursuant to this clause (7);

(8) Indebtedness Incurred in respect of workers' compensation claims, self-insurance obligations, performance, surety and similar bonds and completion guarantees provided by the Company or a Restricted Subsidiary in the ordinary course of business;

(9) Indebtedness arising from agreements of the Company or a Restricted Subsidiary providing for indemnification, adjustment of purchase price or similar obligations, in each case, Incurred or assumed in connection with the disposition of any business, assets or Capital Stock of a Restricted Subsidiary, *provided* that the maximum aggregate liability in respect of all such Indebtedness shall at no time exceed the gross proceeds actually received by the Company and its Restricted Subsidiaries in connection with such disposition;

(10) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business, *provided, however*, that such Indebtedness is extinguished within five Business Days of Incurrence; and

(11) in addition to the items referred to in clauses (1) through (10) above, Indebtedness of the Company and its Guarantors in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness Incurred pursuant to this clause (11) and then outstanding, will not exceed $25.0 million at any time outstanding, including all Refinancing Indebtedness Incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness Incurred pursuant to this clause (11); *provided* that a Foreign Subsidiary that is not a Guarantor can Incur indebtedness under this clause (11) of up to $5.0 million at any one time outstanding.

(c) The Company will not Incur any indebtedness under the preceding paragraph if the proceeds thereof are used, directly or indirectly, to refinance any Subordinated Obligations of the Company unless such Indebtedness will be subordinated to the Notes, if any, to at least the same extent as such Subordinated Obligations. No Guarantor will Incur any Indebtedness if the proceeds thereof are used, directly or indirectly, to refinance any Guarantor Subordinated Obligations of such Guarantor unless such Indebtedness will be subordinated to the obligations of such Guarantor under its Note Guarantee to at least the same extent as such Guarantor Subordinated Obligations. No Restricted Subsidiary (other than a Guarantor) may incur any indebtedness if the proceeds are used to refinance Indebtedness of the Company or a Guarantor.

(d) For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness Incurred pursuant to and in compliance with, this *Section 3.3*:

(1) in the event that Indebtedness meets the criteria of more than one of the types of Indebtedness described in paragraphs (a) and (b) of this *Section 3.3*, the Company, in its sole discretion, will classify such item of Indebtedness on the date of Incurrence and, with the exception of clause (1) of paragraph (b), may later classify such item of Indebtedness in any manner that complies with this *Section 3.3* and only be required to include the amount and type of such Indebtedness in one of such paragraphs;

(2) all Indebtedness outstanding on the date of this Indenture under the Senior Secured Credit Agreement shall be deemed Incurred under clause (1) of paragraph (b) of this *Section 3.3* and not paragraph (a) or clause (4) of paragraph (b) of this *Section 3.3*;

(3) Guarantees of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included;

(4) if obligations in respect of letters of credit are Incurred pursuant to a Credit Facility and are being treated as Incurred pursuant to clause (1) of paragraph (b) of this *Section 3.3* and the letters of credit relate to other Indebtedness, then such other Indebtedness shall not be included;

(5) the principal amount of any Disqualified Stock of the Company or a Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary that is not a Guarantor, shall be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof;

(6) Indebtedness permitted by this *Section 3.3* need not be permitted solely by reference to one provision permitting such Indebtedness but may be permitted in part by one such provision and in part by one or more other provisions of this *Section 3.3* permitting such Indebtedness; and

(7) the amount of Indebtedness issued at a price that is less than the principal amount thereof shall be equal to the amount of the liability in respect thereof determined in accordance with GAAP.

(e) Accrual of interest, accrual of dividends, the accretion of accreted value, the payment of interest in the form of additional Indebtedness, the reclassification of Preferred Stock as Indebtedness due to a change in accounting principles and the payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock shall not be deemed to be an Incurrence of Indebtedness for purposes of this *Section 3.3*. The amount of any Indebtedness outstanding as of any date shall be (i) the accreted value thereof in the case of any Indebtedness issued with original issue discount and (ii) the principal amount or liquidation preference thereof, together with any interest thereon that is more than 30 days past due, in the case of any other Indebtedness.

(f) In addition, the Company shall not permit any of its Unrestricted Subsidiaries to Incur any Indebtedness or issue any shares of Disqualified Stock, other than Non-Recourse Debt. If at any time an Unrestricted Subsidiary becomes a Restricted Subsidiary, any Indebtedness of such Subsidiary shall be deemed to be Incurred by a Restricted Subsidiary as of such date (and, if such Indebtedness is not permitted to be Incurred as of such date under this *Section 3.3*, the Company shall be in Default of this *Section 3.3*).

(g) For purposes of determining compliance with any U.S. dollar-denominated restriction on the Incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness; *provided* that if such Indebtedness is Incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced. Notwithstanding any other provision of this *Section 3.3*, the maximum amount of Indebtedness that the Company may Incur pursuant to this *Section 3.3* shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

SECTION 3.4. *Limitation on Restricted Payments.* (a) The Company shall not, and shall not permit any of its Restricted Subsidiaries, directly or indirectly, to:

(1) declare or pay any dividend or make any distribution (whether made in cash, securities or other property) on or in respect of its Capital Stock (including any payment in connection with any merger or consolidation involving the Company or any of its Restricted Subsidiaries) except:

(a) dividends or distributions payable in Equity Interests (other than Disqualified Stock) of the Company; and

(b) dividends or distributions payable to the Company or a Restricted Subsidiary (and if such Restricted Subsidiary is not a Wholly Owned Subsidiary, to its other holders of Capital Stock on a pro rata basis, taking into account the relative preferences, if any, of the various classes of Capital Stock in such Restricted Subsidiaries);

(2) purchase, redeem, retire or otherwise acquire for value any Capital Stock of the Company or any direct or indirect parent of the Company held by Persons other than the Company or a Restricted Subsidiary (other than in exchange for Equity Interests of the Company (other than Disqualified Stock));

(3) purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Obligations or Guarantor Subordinated Obligations (other than (x) Indebtedness of the Company owing to and held by any Guarantor or Indebtedness of a Guarantor owing to and held by the Company or any other Guarantor permitted under clause (3) of paragraph (b) of *Section 3.3* or (y) the purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Obligations or Guarantor Subordinated Obligations purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of purchase, repurchase, redemption, defeasance or other acquisition or retirement); or

(4) make any Restricted Investment in any Person;

(any such dividend, distribution, purchase, redemption, repurchase, defeasance, other acquisition, retirement or Restricted Investment referred to in clauses (1) through (4) shall be referred to herein as a "*Restricted Payment*"), if at the time the Company or such Restricted Subsidiary makes such Restricted Payment:

(a) a Default shall have occurred and be continuing (or would result therefrom); or

(b) the Company is not able to Incur an additional $1.00 of Indebtedness pursuant to paragraph (a) of *Section 3.3* after giving effect, on a pro forma basis, to such Restricted Payment; or

(c) the aggregate amount of such Restricted Payment and all other Restricted Payments declared or made subsequent to the Issue Date (excluding clauses (1), (2), (3), (4), (6), (7), (8), (9), (10) and (11) would exceed the sum of:

(i) 50% of (i) Consolidated Net Income for the period (treated as one accounting period) from the beginning of the Company's last completed fiscal quarter preceding the Issue Date to the end of the most recent fiscal quarter ending prior to the date of such Restricted Payment for which financial statements are in existence (or, in case such Consolidated Net Income is a deficit, minus 100% of such deficit and (ii) any dividends received by the Company or a Wholly Owned Subsidiary of the Company that is a Guarantor after the Issue Date from an Unrestricted Subsidiary of the Company, to the extent that such dividends were not otherwise included in Consolidated Net Income for such periods or otherwise included in clause (v) below;

(ii) 100% of the aggregate Net Cash Proceeds and the fair market value of the assets (as determined conclusively by the Board of Directors of the Company) received by the Company from the issue or sale of its Equity Interests (other than Disqualified Stock) or other capital contributions subsequent to the Issue Date (other than Net Cash Proceeds received from an issuance or sale of such Capital Stock to a Subsidiary of the Company or an employee stock ownership plan, option plan or similar trust to the extent such sale to an employee stock ownership plan or similar trust is financed by loans from or Guaranteed by the Company or any Restricted Subsidiary unless such loans have been repaid with cash on or prior to the date of determination) excluding in any event Net Cash Proceeds received by the Company from the issue and sale of its Capital Stock or capital contributions to the extent applied to redeem Notes in compliance with the provisions set forth in the second paragraph of paragraph 5 of the form of Notes set forth in Exhibit A and Exhibit B hereto; *provided* that this clause (ii) shall not apply to Net Cash Proceeds received in connection with the Transactions, as contemplated in the Offering Memorandum;

(iii) the amount by which Indebtedness of the Company or its Restricted Subsidiaries is reduced on the Company's balance sheet upon the conversion or exchange (other than by a Subsidiary of the Company) subsequent to the Issue Date of any Indebtedness of the Company or its Restricted Subsidiaries convertible or exchangeable for Capital Stock (other than Disqualified Stock) of the Company (less the amount of any cash, or the fair market value of any other property, distributed by the Company upon such conversion or exchange);

(iv) to the extent that any Unrestricted Subsidiary designated as such after the Issue Date (A) is redesignated as a Restricted Subsidiary, (B) is merged or consolidated into the Company or any of its Restricted Subsidiaries or (C) transfers all or substantially all of its assets to the Company or any of its Restricted Subsidiaries after the Issue Date, the fair market value (as determined conclusively by the Board of Directors of the Company) of (x) in the case of clause (A) or (B) above, the Company's Investment in such Subsidiary as of the date of such redesignation, merger or consolidation and (y) in the case of clause (C) above, such assets (other than to the extent the Investment in such Unrestricted Subsidiary was made pursuant to clause (12) of the next succeeding paragraph or pursuant to clause (11) of the definition of Permitted Investment); and

(v) to the extent that any Restricted Investment that was made after the Issue Date of this Indenture is sold for cash or otherwise liquidated, repaid, repurchased or redeemed for cash, the lesser of (i) the cash return of capital with respect to such Restricted Investment (less the cost of disposition, if any), and (ii) the initial amount of such Restricted Investment to the extent such amount was not already included in Consolidated Net Income.

(b) The provisions of the preceding paragraph (a) shall not prohibit:

(1) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Capital Stock, Disqualified Stock or Subordinated Obligations of the Company or Guarantor Subordinated Obligations of any Guarantor made by exchange for, or out of the proceeds of (i) the substantially contemporaneous contribution of common equity capital to the Company or (ii) the substantially concurrent sale of, Capital Stock of the Company (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary or an employee stock ownership plan or similar trust to the extent such sale to an employee stock ownership plan or similar trust is financed by loans from or Guaranteed by the Company or any Restricted Subsidiary unless such loans have been repaid with cash on or prior to the date of determination); *provided, however,* that the Net Cash Proceeds from such sale of Capital Stock shall be excluded from clause (c)(ii) of the preceding paragraph;

(2) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Obligations of the Company or Guarantor Subordinated Obligations of any Guarantor made by exchange for, or out of the proceeds of the substantially concurrent sale of, Subordinated Obligations of the Company or any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Guarantor Subordinated Obligations made by exchange for or out of the proceeds of the substantially concurrent sale of Guarantor Subordinated Obligations that, in each case, is permitted to be Incurred pursuant to *Section 3.3* and that in each case constitutes Refinancing Indebtedness;

(3) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Disqualified Stock of the Company or a Restricted Subsidiary made by exchange for or out of the proceeds of the substantially concurrent sale of Disqualified Stock of the Company or such Restricted Subsidiary, as the case may be, that, in each case, is permitted to be Incurred pursuant to *Section 3.3* and that in each case constitutes Refinancing Indebtedness;

(4) so long as no Default or Event of Default has occurred and is continuing, any purchase or redemption of Subordinated Obligations or Guarantor Subordinated Obligations of a Guarantor from Net Available Cash to the extent permitted under *Section 3.8*;

(5) dividends paid within 60 days after the date of declaration if at such date of declaration such dividend would have complied with this *Section 3.4* and the consummation of any irrevocable redemption within 60 days after the giving of the redemption notice if at the date of such notice the redemption payment would have complied with this *Section 3.4*;

(6) so long as no Default or Event of Default has occurred and is continuing, the purchase, redemption or other acquisition, cancellation or retirement for value of Equity Interests of the Company or any Restricted Subsidiary or any parent of the Company held by any existing or former employees or management or directors of the Company or Holdings or any Subsidiary of the Company or their assigns, estates or heirs, in each case in connection with (x) the death or disability of such employee, manager or director or (y) the repurchase provisions under employee stock option or stock purchase agreements or other agreements to compensate management employees or directors; *provided* that in the case of clause (y) such redemptions or repurchases pursuant to such clause will not exceed $2.5 million in the aggregate during any twelve-month period plus the aggregate Net Cash Proceeds received by the Company after the Issue Date from the issuance of such Capital Stock or equity appreciation rights to, or the exercise of options, warrants or other rights to purchase or acquire Capital Stock of the Company by, any current or former director, officer or employee of the Company or any Restricted Subsidiary; *provided* that the amount of such Net Cash Proceeds received by the Company and utilized pursuant to this clause (6) for any such repurchase, redemption, acquisition or retirement will be excluded from clause (c)(ii) *Section 3.4(a)* and *provided, further*, that unused amounts available pursuant to this clause (6) to be utilized for Restricted Payments during any twelve-month period may be carried forward and utilized in the next succeeding twelve-month period;

(7) so long as no Default or Event of Default has occurred and is continuing, the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Company or Preferred Stock of any Guarantor issued in accordance with the terms of this Indenture to the extent such dividends are included in the definition of "Consolidated Interest Expense";

(8) repurchases of Capital Stock deemed to occur upon the exercise of stock options, warrants or other convertible securities if such Capital Stock represents (i) a portion of the exercise price thereof or (ii) withholding incurred in connection with such exercise, *provided* that the amount of such withholding taxes shall reduce the amount set forth in clause (6) above;

(9) cash dividends or loans to Holdings ("Permitted Holdings Payments") in amounts equal to:

(a) the amounts required for Holdings to pay any Federal, state or local income taxes to the extent that such income taxes are directly attributable to the income of Holdings, the Company and its Restricted Subsidiaries and, to the extent of amounts actually received from Unrestricted Subsidiaries, in amounts required to pay such taxes to the extent attributable to the income of the Unrestricted Subsidiaries;

(b) the amounts required for Holdings to pay franchise taxes and other fees required to maintain its legal existence;

(c) an amount not to exceed $1.0 million in any fiscal year to permit Holdings to pay its corporate overhead expenses Incurred in the ordinary course of business, and to pay salaries or other compensation of employees who perform services for both Holdings and the Company;

(d) dividends or distributions to Holdings to permit Holdings to satisfy its payment obligations, if any under the Expense Reimbursement Agreement as in effect on the Issue Date, or as later amended, *provided* that any such amendment is not more disadvantageous to the Company in any material respect that the Expense Reimbursement Agreement as in effect on the Issue Date; and

(e) any fees and expenses related to any equity offering or other financing of any direct or indirect parent of the Company to the extent the proceeds of such offering or financing are contributed to the Company;

(10) any payments made in connection with the Transactions pursuant to the Merger Agreement and any other agreements or documents related to the Transactions and set forth on a schedule to this Indenture in effect on the closing date of the Transactions (without giving effect to subsequent amendments, waivers or other modifications to such agreements or documents) or as otherwise described in the Offering Memorandum;

(11) the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of any Subordinated Obligation (i) at a purchase price not greater than 101% of the principal amount of such Subordinated Obligation in the event of a Change of Control in accordance with provisions similar to *Section 3.10* or (ii) at a purchase price not greater than 100% of the principal amount thereof in accordance with provisions similar to *Section 3.8*; *provided* that, prior to or simultaneously with such purchase, repurchase, redemption, defeasance or other acquisition or retirement, the Company has made the Change of Control Offer or Asset Disposition Offer, as applicable, as provided in *Section 3.10* or *Section 3.8*, respectively, with respect to the Notes and has completed the repurchase or redemption of all Notes validly tendered for payment in connection with such Change of Control Offer or Asset Disposition Offer; and

(12) Restricted Payments in an amount not to exceed $5.0 million.

The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment. The fair market value of any cash Restricted Payment shall be its face amount and the fair market value of any non-cash Restricted Payment shall be determined conclusively by the Board of Directors of the Company acting in good faith whose resolution with respect thereto shall be delivered to the Trustee, such determination to be based upon an opinion or appraisal issued by an accounting, appraisal or investment banking firm of national standing if such fair market value is estimated in good faith by the Board of Directors of the Company to exceed $15.0 million. Not later than the date of making any Restricted Payment, the Company shall deliver to the Trustee an Officers' Certificate stating that such Restricted Payment is permitted and setting forth the basis upon which the calculations required by *Section 3.4* were computed, together with a copy of any fairness opinion or appraisal required by this Indenture.

SECTION 3.5. *Limitation on Liens.* The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, Incur or suffer to exist any Lien (other than Permitted Liens) upon any of its property or assets (including Capital Stock of Restricted Subsidiaries), whether owned on the date of this Indenture or acquired after that date, which Lien is securing any Indebtedness, unless contemporaneously with the Incurrence of such Liens effective provision is made to secure the Indebtedness due under this Indenture and the Notes or, in respect of Liens on any Restricted Subsidiary's property or assets, any Note Guarantee of such Restricted Subsidiary, equally and ratably with (or senior in priority to in the case of Liens with respect to Subordinated Obligations or Guarantor Subordinated Obligations) the Indebtedness secured by such Lien for so long as such Indebtedness is so secured.

SECTION 3.6. *Limitation on Sale/Leaseback Transactions.* The Company shall not, and shall not permit any of its Restricted Subsidiaries to, enter into any Sale/Leaseback Transaction *unless*: (i) the Company or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Sale/Leaseback Transaction at least equal to the fair market value (as evidenced by a resolution of the Board of Directors of the Company) of the property subject to such transaction; (ii) the Company or such Restricted Subsidiary could have Incurred Indebtedness in an amount equal to the Attributable Indebtedness in respect of such Sale/Leaseback Transaction pursuant to *Section 3.3*; (iii) the Company or such Restricted Subsidiary would be permitted under *Section 3.5* to create a Lien on the property subject to such Sale/Leaseback Transaction without securing the Notes; and (iv) the Sale/Leaseback Transaction is treated as an Asset Disposition and all of the conditions of this Indenture described in *Section 3.8* (including the provisions concerning the application of Net Available Cash) are satisfied with respect to such Sale/Leaseback Transaction, treating all of the consideration received in such Sale/Leaseback Transaction as Net Available Cash for purposes of *Section 3.8*.

SECTION 3.7. *Limitation on Restrictions on Distributions from Restricted Subsidiaries.* (a) The Company shall not, and shall not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to: (1) pay dividends or make any other distributions on its Capital Stock or pay any Indebtedness or other obligations owed to the Company or any Restricted Subsidiary (it being understood that the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on Common Stock shall not be deemed a restriction on the ability to make distributions on Capital Stock); (2) make any loans or advances to the Company or any Restricted Subsidiary (it being understood that the subordination of loans or advances made to the Company or any Restricted Subsidiary to other Indebtedness Incurred by the Company or any Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances); or (3) transfer any of its property or assets to the Company or any Restricted Subsidiary (it being understood that such transfers shall not include any type of transfer described in clause (1) or (2) of this *Section 3.7(a)*.

(b) The provisions of paragraph (a) of this *Section 3.7* shall not prohibit:

(i) any encumbrance or restriction pursuant to an agreement in effect at or entered into on the Issue Date, including, without limitation, this Indenture, the Notes, the Exchange Notes, the Note Guarantees, and the Senior Secured Credit Agreement (and related documentation) in effect on such date;

(ii) any encumbrance or restriction with respect to a Restricted Subsidiary pursuant to an agreement relating to any Equity Interests or Indebtedness Incurred by a Restricted Subsidiary on or before the date on which such Restricted Subsidiary was acquired by the Company or a Restricted Subsidiary (other than Equity Interests or Indebtedness Incurred as consideration in, or to provide all or any portion of the funds utilized to consummate, the transaction or series of related transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was acquired by the Company or in contemplation of the transaction) and outstanding on such date, *provided* that any such encumbrance or restriction shall not extend to any assets or property of the Company or any other Restricted Subsidiary other than the assets and property so acquired, and, that in the case of Indebtedness, such Indebtedness was permitted by the terms of this Indenture to be Incurred;

(iii) any encumbrance or restriction (A) with respect to a Restricted Subsidiary pursuant to an agreement effecting a refunding, replacement or refinancing of Indebtedness Incurred pursuant to an agreement referred to in clause (i) or (ii) of this paragraph or this clause (iii) or (B) contained in any amendment, restatement, modification, renewal, supplement, refunding, replacement or refinancing of an agreement referred to in clause (i) or (ii) of this paragraph or this clause (iii); *provided*, *however*, that the encumbrances and restrictions with respect to such Restricted Subsidiary contained in any such agreement or amendment, restatement, modification, renewal, supplement, refunding, replacement or refinancing are no less favorable in any material respect, taken as a whole, in the good faith determination of the Company, to the Holders than the encumbrances and restrictions contained in such agreements referred to in clauses (i) or (ii) of this paragraph on the Issue Date or the date such Restricted Subsidiary became a Restricted Subsidiary or was merged into a Restricted Subsidiary, whichever is applicable;

(iv) in the case of clause (3) of paragraph (a) of this *Section 3.7*, any encumbrance or restriction: (A) that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license or similar contract, or the assignment or transfer of any such lease, license or other similar contract; (B) contained in mortgages, pledges or other security agreements permitted under this Indenture securing Indebtedness of the Company or a Restricted Subsidiary to the extent such encumbrances or restrictions restrict the transfer of the property subject to such mortgages, pledges or other security agreements; or (C) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Company or any Restricted Subsidiary;

(v) (a) purchase money obligations for property acquired in the ordinary course of business and (b) Capitalized Lease Obligations permitted under this Indenture, in each case, that impose encumbrances or restrictions of the nature described in clause (3) of paragraph (a) of this *Section 3.7* on the property so acquired;

(vi) any restriction with respect to a Restricted Subsidiary (or any of its property or assets) imposed pursuant to an agreement entered into for the direct or indirect sale or disposition of the Equity Interests or assets of such Restricted Subsidiary (or the property or assets that are subject to such restriction) pending the closing of such sale or disposition;

(vii) any customary provisions in joint venture agreements relating to joint ventures that are not Restricted Subsidiaries and other similar agreements entered into in the ordinary course of business;

(viii) restrictions on cash and other deposits or net worth provisions in leases and other agreements entered into by the Company or any Restricted Subsidiary in the ordinary course of business;

(ix) encumbrances or restrictions arising or existing by reason of applicable law or any applicable rule, regulation or order;

(x) encumbrances or restrictions contained in indentures or debt instruments or other debt arrangements Incurred or Preferred Stock issued by Guarantors in accordance with *Section 3.3* that are not more restrictive, taken as a whole, than those applicable to the Company in either this Indenture or the Senior Secured Credit Agreement on the Issue Date (which results in encumbrances or restrictions comparable to those applicable to the Company at a Restricted Subsidiary level); and

(xi) encumbrances or restrictions contained in indentures or other debt instruments or debt arrangements Incurred or Preferred Stock issued subsequent to the Issue Date by Restricted Subsidiaries that are not Guarantors pursuant to clause (5) of paragraph (b) of *Section 3.3* by Restricted Subsidiaries.

SECTION 3.8. *Limitation on Sales of Assets and Subsidiary Stock.* (a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, make any Asset Disposition unless: (1) the Company or such Restricted Subsidiary, as the case may be, receives consideration at least equal to the fair market value (such fair market value to be determined on the date of contractually agreeing to such Asset Disposition), as determined in good faith by the Board of Directors (including as to the value of all non-cash consideration), of the shares and assets subject to such Asset Disposition; (2) at least 75% of the consideration from such Asset Disposition received by the Company or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; *provided* that for the purposes of this *Section 3.8*, the following shall be deemed to be cash: (A) the assumption by the transferee of Indebtedness (other than Subordinated Obligations or Disqualified Stock) of the Company or Indebtedness of a Restricted Subsidiary (other than Guarantor Subordinated Obligations or Disqualified Stock of any Guarantor) and the release of the Company or such Restricted Subsidiary from all liability on such Indebtedness in connection with such Asset Disposition (in which case the Company will, without further action, be deemed to have applied such deemed cash to Indebtedness); and (B) securities, notes or other obligations received by the Company or any Restricted Subsidiary from the transferee that are converted by the Company or such Restricted Subsidiary into cash within 180 days after receipt; and (3) an amount equal to 100% of the Net Available Cash from such Asset Disposition is applied by the Company or such Restricted Subsidiary, as the case may be: (A) to repay Indebtedness of the Company (other than any Disqualified Stock or Subordinated Obligations) or Indebtedness of a Restricted Subsidiary (other than any Disqualified Stock or Guarantor Subordinated Obligations of a Guarantor) (in each case other than Indebtedness owed to the Company or an Affiliate of the Company) and, if the Indebtedness repaid is revolving credit indebtedness, to correspondingly reduce commitments with respect thereto within 365 days after the later of the date of such Asset Disposition or the receipt of such Net Available Cash; or (B) to invest in Additional Assets within 365 days from the later of the date of such Asset Disposition or the receipt of such Net Available Cash (or enter into a definitive agreement with respect thereto that is consummated within 545 days after the days after the receipt of any such Net Available Cash), *provided* that pending the final application of any such Net Available Cash in accordance with clause (3)(A) or clause (3)(B) above, the Company and its Restricted Subsidiaries may temporarily reduce Indebtedness or otherwise invest such Net Available Cash in any manner not prohibited by this Indenture.

(b) Any Net Available Cash from Asset Dispositions that are not applied or invested as provided in the preceding paragraph (a) shall be deemed to constitute "*Excess Proceeds*." On the 366th day after an Asset Disposition (or such later date as permitted in clause (3)(B) of the preceding paragraph (a), if the aggregate amount of Excess Proceeds exceeds $10.0 million, the Company shall be required to make an offer ("*Asset Disposition Offer*") to all Holders and to the extent required by the terms of other Pari Passu Indebtedness, to all holders of other Pari Passu Indebtedness outstanding with similar provisions requiring the Company to make an offer to purchase such Pari Passu Indebtedness with the proceeds from any Asset Disposition ("*Pari Passu Notes*"), to purchase the maximum principal amount of Notes and any such Pari Passu Notes to which the Asset Disposition Offer applies that may be purchased out of the Excess Proceeds, at an offer price in cash in an amount equal to 100% of the principal amount of the Notes and Pari Passu Notes plus accrued and unpaid interest to the date of purchase, in accordance with the procedures set forth in this Indenture or the agreements governing the Pari Passu Notes, as applicable, in the case of the Notes in integral multiples of $1,000. To the extent that the aggregate amount of Notes and Pari Passu Notes so validly tendered and not properly withdrawn pursuant to an Asset Disposition Offer is less than the Excess Proceeds, the Company may

use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in this Indenture. If the aggregate principal amount of Notes surrendered by holders thereof and other Pari Passu Notes surrendered by holders or lenders, collectively, exceeds the amount of Excess Proceeds, the Trustee shall select the Notes and Pari Passu Notes to be purchased on a pro rata basis on the basis of the aggregate principal amount of tendered Notes and Pari Passu Notes. Upon completion of such Asset Disposition Offer, the amount of Excess Proceeds shall be reset at zero. Notwithstanding anything to the contrary in the foregoing, the Company may commence an Asset Disposition Offer prior to the expiration of 365 days after the occurrence of an Asset Disposition (or such later date after giving effect to the proviso in clause (3)(B) of the preceding paragraph (a), *provided* that such Asset Disposition Offer complies with all applicable securities laws and regulations).

(c) The Asset Disposition Offer shall remain open for a period of 20 Business Days following its commencement, except to the extent that a longer period is required by applicable law (the "*Asset Disposition Offer Period*"). No later than five Business Days after the termination of the Asset Disposition Offer Period (the "*Asset Disposition Purchase Date*"), the Company shall purchase the principal amount of Notes and Pari Passu Notes required to be purchased pursuant to this *Section 3.8* (the "*Asset Disposition Offer Amount*") or, if less than the Asset Disposition Offer Amount has been so validly tendered, all Notes and Pari Passu Notes validly tendered in response to the Asset Disposition Offer.

(d) If the Asset Disposition Purchase Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest shall be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest shall be payable to Holders who tender Notes pursuant to the Asset Disposition Offer.

(e) On or before the Asset Disposition Purchase Date, the Company shall, to the extent lawful, accept for payment, on a pro rata basis to the extent necessary, the Asset Disposition Offer Amount of Notes and Pari Passu Notes or portions of Notes and Pari Passu Notes so validly tendered and not properly withdrawn pursuant to the Asset Disposition Offer, or if less than the Asset Disposition Offer Amount has been validly tendered and not properly withdrawn, all Notes and Pari Passu Notes so validly tendered and not properly withdrawn, in the case of the Notes in integral multiples of $1,000. The Company shall deliver to the Trustee an Officers' Certificate stating that such Notes or portions thereof were accepted for payment by the Company in accordance with the terms of this *Section 3.8* and, in addition, the Company shall deliver all certificates and notes required, if any, by the agreements governing the Pari Passu Notes. The Company or the Paying Agent, as the case may be, shall promptly (but in any case not later than five Business Days after termination of the Asset Disposition Offer Period) mail or deliver to each tendering Holder or holder or lender of Pari Passu Notes, as the case may be, an amount equal to the purchase price of the Notes or Pari Passu Notes so validly tendered and not properly withdrawn by such holder or lender, as the case may be, and accepted by the Company for purchase, and the Company shall promptly issue a new Note, and the Trustee, upon delivery of an Officers' Certificate from the Company, shall authenticate and mail or deliver such new Note to such holder, in a principal amount equal to any unpurchased portion of the Note surrendered; *provided* that each such new Note shall be in a principal amount of $1,000 or an integral multiple of $1,000. In addition, the Company shall take any and all other actions required by the agreements governing the Pari Passu Notes. Any Note not so accepted shall be promptly mailed or delivered by the Company to the holder thereof. The Company shall publicly announce the results of the Asset Disposition Offer on the Asset Disposition Purchase Date.

(f) The Company will not, and will not permit any Restricted Subsidiary to, engage in any Asset Swaps, unless (1) at the time of entering into such Asset Swap and immediately after giving effect to such Asset Swap, no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof; and (2) the Board of Directors has determined that the aggregate fair market value of the property or assets being transferred by the Company or such Restricted Subsidiary is not greater than the aggregate fair market value of the property or assets being received by the Company or such Restricted Subsidiary and has approved the terms of such Asset Swap.

(g) The Company shall comply, to the extent applicable, with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this Indenture. To the extent that the provisions of any securities laws or regulations conflict with provisions of this *Section 3.8*, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Indenture by virtue of any conflict.

(h) For the purposes of this *Section 3.8*, Holders electing to have a Note purchased shall be required to surrender the Note, with an appropriate form duly completed, to the Company at the address specified in the notice at least three Business Days prior to the purchase date. Each Holder shall be entitled to withdraw its election if the Company receives, not later than one Business Day prior to the purchase date, a telegram, telex, facsimile transmission or letter from such Holder setting forth the name of such Holder, the principal amount of the Note or Notes which were delivered for purchase by such Holder and a statement that such Holder is withdrawing his election to have such Note or Notes purchased.

SECTION 3.9. *Limitation on Transactions with Affiliates.* (a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or conduct any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Company (an "*Affiliate Transaction*") *unless*: (1) the terms of such Affiliate Transaction are no less favorable to the Company or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable transaction at the time of such transaction in arm's-length dealings with a Person who is not such an Affiliate; (2) in the event such Affiliate Transaction involves an aggregate consideration in excess of $5.0 million, the terms of such transaction have been approved by a majority of the members of the Board of Directors of the Company and either (x) a further resolution by a majority of the members of such Board having no personal stake in such transaction, if any (and such majority or majorities, as the case may be, determines that such Affiliate Transaction satisfies the criteria in clause (1) above); or (y) the Company shall have received a written opinion from an independent investment banking, accounting or appraisal firm of nationally recognized standing that such Affiliate Transaction is not materially less favorable than those that might reasonably have been obtained in a comparable transaction at such time on an arm's length basis from a Person that is not an Affiliate; and (3) in the event such Affiliate Transaction involves an aggregate consideration in excess of $15.0 million the Company has received a written opinion from an independent investment banking, accounting or appraisal firm of nationally recognized standing that such Affiliate Transaction is not materially less favorable than those that might reasonably have been obtained in a comparable transaction at such time on an arm's length basis from a Person that is not an Affiliate.

(b) The provisions of paragraph (a) of this *Section 3.9* shall not apply to: (1) any Restricted Payment permitted to be made pursuant to *Section 3.4* or any Permitted Investment (other than Permitted Investments set forth under clauses (1)(b), (2), (11), (13) and (14) of the definition of Permitted Investments); (2) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements and other compensation arrangements, options to purchase Capital Stock of the Company, restricted stock plans, long-term incentive plans, stock appreciation rights plans, participation plans or similar employee benefits plans and/or indemnity provided on behalf of directors, officers and employees approved by the Board of Directors of the Company; (3) to the extent permitted by applicable law, loans or advances to employees, officers or directors in the ordinary course of business of the Company or any of its Restricted Subsidiaries but in any event not to exceed $2.5 million in the aggregate outstanding at any one time (without giving effect to the forgiveness of any such loan) with respect to all loans or advances made since the Issue Date; (4) any transaction between the Company and a Restricted Subsidiary or between Restricted Subsidiaries and Guarantees issued by the Company or a Restricted Subsidiary for the benefit of the Company or a Restricted Subsidiary, as the case may be, in accordance with *Section 3.3*; (5) the payment of reasonable and customary fees paid to, and indemnity provided on behalf of, directors of the Company or any Restricted Subsidiary; (6) the existence of, and the performance of obligations of the Company or any of its Restricted Subsidiaries under the terms of any agreement to which the Company or any of its Restricted Subsidiaries is a party as of or on the Issue Date, as these agreements may be amended, modified, supplemented, extended or renewed from time to time; *provided*, *however*, that any future amendment, modification, supplement, extension or renewal entered into after the Issue Date shall be permitted to the extent that its terms are not more disadvantageous to the Holders than the terms of the agreements in effect on the Issue Date; (7) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, in each case in the ordinary course of the business of the Company and its Restricted Subsidiaries and otherwise in compliance with the terms of this Indenture; *provided* that in the reasonable determination of the members of the Board of Directors or senior management of the Company, such transactions are on terms that are no less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person; (8) any issuance or sale of Equity Interests (other than Disqualified Stock) to Affiliates of the Company and the granting of registration and other customary rights in connection therewith; (9) Permitted Holdings Payments; and (10) any transaction on arm's length terms with non-affiliates that become Affiliates as a result of such transaction.

SECTION 3.10. *Change of Control.* (a) If a Change of Control occurs, each Holder shall have the right to require the Company to repurchase all or any part (equal to $1,000 or an integral multiple thereof) of such Holder's Notes at a purchase price in cash equal to 101% of the principal amount of the Notes, plus accrued and unpaid interest and additional interest, if any, to the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided*, *however* that notwithstanding the foregoing, the Company shall not be obligated to repurchase Notes pursuant to this *Section 3.10* if the Company has previously exercised its right to redeem Notes pursuant to *Section 5.1*.

(b) Within 30 days following any Change of Control, unless the Company has exercised its right to redeem all of the Notes as described under *Section 5.1*, the Company shall mail a notice (the "*Change of Control Offer*") to each Holder (with a copy to the Trustee) describing the transaction or transactions that constitute the Change of Control and offering to repurchase Notes on the Change of Control payment date specified in the notice, and such notice shall otherwise include:

(1) that a Change of Control has occurred and that such Holder has the right to require the Company to purchase such Holder's Notes at a purchase price in cash equal to 101% of the principal amount of such Notes plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of Holders of record on a record date to receive interest on the relevant interest payment date) (the "*Change of Control Payment*");

(2) the circumstances and relevant facts and financial information regarding such Change of Control;

(3) the repurchase date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed) (the "*Change of Control Payment Date*");

(4) that any Note not tendered shall continue to accrue interest pursuant to its terms;

(5) that, unless the Company defaults in the payment of the purchase price, any Note accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest on and after the Change of Control Payment Date; and

(6) the procedures determined by the Company, consistent with this *Section 3.10*, that a Holder must follow in order to have its Notes repurchased or to cancel such order of purchase.

(c) Holders electing to have a Note purchased shall be required to surrender the Note, with an appropriate form duly completed, to the Company at the address specified in the notice at least three Business Days prior to the purchase date. Each Holder shall be entitled to withdraw its election if the Company receives, not later than one Business Day prior to the purchase date, a telegram, telex, facsimile transmission or letter from such Holder setting forth the name of such Holder, the principal amount of the Note or Notes which were delivered for purchase by such Holder and a statement that such Holder is withdrawing his election to have such Note or Notes purchased.

(d) On the Change of Control Payment Date, the Company shall, to the extent lawful: (i) accept for payment all Notes or portions of Notes (in integral multiples of $1,000) properly tendered pursuant to the Change of Control Offer; (ii) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes so tendered; and (iii) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officers' Certificate specifying the Notes or portions thereof accepted for payment by the Company. The Paying Agent shall promptly mail, to the Holders of Notes so accepted, payment in an amount equal to the purchase price, and the Trustee shall promptly authenticate and deliver (or cause to be transferred by book entry) to such Holders a new Note equal in principal amount to any unpurchased portion of the Notes surrendered; *provided* that each Note purchased and each new Note issued shall be in a principal amount of $1,000 or an integral multiple thereof.

(e) A Change of Control Offer may be made in advance of a Change of Control, conditioned upon consummation of the Change of Control, if a definitive agreement is in effect at the time of making such Change of Control offer that, when consummated in accordance with its terms, will result in a Change of Control, *provided* that such Change of Control Offer complies with all applicable securities laws or regulations.

(f) If the Change of Control Payment Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest, if any, shall be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest shall be payable to Holders who tender pursuant to the Change of Control Offer.

(g) The Company shall publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(h) The Company shall not be required to make a Change of Control Offer upon a Change of Control if (i) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer or (ii) notice of redemption has been given pursuant to *Section 5.1*, unless and until there is a default of the applicable redemption price.

(i) The Company shall comply, to the extent applicable, with the requirements under Rule 14e-1 of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this *Section 3.10*. To the extent that the provisions of any securities laws or regulations conflict with provisions of this *Section 3.10*, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Indenture by virtue of the conflict.

SECTION 3.11. *Future Guarantors.* (a) After the Issue Date, the Company will cause each Restricted Subsidiary, other than a Foreign Subsidiary, created or acquired by the Company or one or more of its Restricted Subsidiaries to execute and deliver to the Trustee a supplemental indenture to this Indenture, substantially in the form attached as Exhibit D hereto within 10 Business Days of the date on which it was acquired or created pursuant to which such Guarantor will unconditionally Guarantee, on a joint and several basis, the full and prompt payment of the principal of, premium, if any and interest on the Notes on a senior basis.

(b) The obligations of each Guarantor will be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor (including, without limitation, any guarantees under the Credit Facility) and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Note Guarantee or pursuant to its contribution obligations under this Indenture, result in the obligations of such Guarantor under its Note Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law.

(c) Each Note Guarantee shall be released in accordance with the provisions of *Article X*.

SECTION 3.12. *Limitation on Lines of Business.* The Company shall not, and shall not permit any Restricted Subsidiary to, engage in any business other than a Related Business, except to such extent as would not be material to the Company as a whole.

SECTION 3.13. *Payments for Consent.* Neither the Company nor any the Company's Restricted Subsidiaries shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fees or otherwise, to any Holder of any Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is offered to be paid or is paid to all Holders that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or amendment.

SECTION 3.14. *Maintenance of Office or Agency.* The Company shall maintain in The City of New York, an office or agency where the Notes may be presented or surrendered for payment, where, if applicable, the Notes may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The office of the Trustee, at The Bank of New York Trust Company, N.A., Plaza of the Americas, 600 North Pearl Street, Suite 420 Dallas, Texas 75201, shall be such office or agency of the Company for payment, unless the Company shall designate and maintain some other office or agency for one or more of such purposes. The Company shall give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies (in or outside of The City of New York) where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind any such designation; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, The City of New York for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such other office or agency.

SECTION 3.15. *Money for Note Payments to Be Held in Trust.* If the Company shall at any time act as its own Paying Agent, it shall, on or before each due date of the principal of (or premium, if any) or interest on any of the Notes, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal of (or premium, if any) or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and shall promptly notify the Trustee in writing of its action or failure to so act.

Whenever the Company shall have one or more Paying Agents for the Notes, it shall, on or before each due date of the principal of (or premium, if any) or interest on any Notes, deposit with any Paying Agent a sum in same day funds (or New York Clearing House funds if such deposit is made prior to the date on which such deposit is required to be made) that shall be available to the Trustee by 10:00 a.m. New York City time on such due date sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such Paying Agent is the Trustee) the Company shall promptly notify the Trustee in writing of such action or any failure to so act.

The Company shall cause each Paying Agent (other than the Trustee) to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent shall:

(a) hold all sums held by it for the payment of the principal of (and premium, if any) or interest on Notes in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(b) give the Trustee prompt written notice of any default by the Company (or any other obligor upon the Notes) in the making of any payment of principal (and premium, if any) or interest; and

(c) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such sums.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of (or premium, if any) or interest on any Note and remaining unclaimed for two years after such principal, premium or interest has become due and payable shall be paid to the Company on Company Order, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however,* that the Trustee or such Paying Agent, before being required to make any such repayment to the Company, shall at the expense of the Company cause to be published once, in a leading daily newspaper (if practicable, *The Wall Street Journal* (Eastern Edition)) printed in the English language and of general circulation in New York City, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication nor shall it be later than two years after such principal (or premium, if any) or interest shall have become due and payable, any unclaimed balance of such money then remaining shall be repaid to the Company.

SECTION 3.16. *Maintenance of Existence.* Subject to Article IV, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence and that of each Restricted Subsidiary and the rights (charter and statutory) licenses and franchises of the Company and each Restricted Subsidiary; *provided, however,* that the Company shall not be required to preserve any such existence (except the Company), right, license or franchise if the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and each of its Restricted Subsidiaries, taken as a whole, and that the loss thereof is not, and shall not be, disadvantageous in any material respect to the Holders.

SECTION 3.17. *Payment of Taxes and Other Claims.* The Company shall pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (i) all material taxes, assessments and governmental charges levied or imposed upon the Company or any Subsidiary or upon the income, profits or property of the Company or any Subsidiary and (ii) all lawful claims for labor, materials and supplies, which, if unpaid, might by law become a material liability or lien upon the property of the Company or any Subsidiary; *provided, however,* that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings and for which appropriate reserves, if necessary (in the good faith judgment of management of the Company) are being maintained in accordance with GAAP.

SECTION 3.18. *Maintenance of Properties.* The Company shall cause all material properties owned by the Company or any Restricted Subsidiary or used or held for use in the conduct of its business or the business of any Restricted Subsidiary to be maintained and kept in normal condition, repair and working order and shall cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly conducted at all times; *provided, however,* that nothing in this Section shall prevent the Company or any of its Restricted Subsidiaries from discontinuing the maintenance of any of such properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of its business or the business of any Restricted Subsidiary and not adverse in any material respect to the Holders.

SECTION 3.19. *Compliance with Laws.* The Company shall comply, and shall cause each of its Restricted Subsidiaries to comply, with all applicable statutes, rules, regulations, orders and restrictions of the United States of America, all states and municipalities thereof, and of any governmental regulatory authority, in respect of the conduct of their respective businesses and the ownership of their respective properties, except for such noncompliances as would not in the aggregate have a material adverse effect on the financial condition or results of operations of the Company and its Restricted Subsidiaries, taken as a whole.

SECTION 3.20. *Compliance Certificate.* The Company shall deliver to the Trustee within 120 days after the end of each Fiscal Year of the Company a certificate executed by the Company's principal executive officer, principal accounting officer or principal financial officer stating that in the course of the performance by the signer of his or her duties as such officer he or she would normally have knowledge of any Default or Event of Default and whether or not the signer knows of any Default or Event of Default that occurred during such period. If he or she does, the certificate shall describe the Default or Event of Default, its status and what action the Company is taking or proposes to take with respect thereto. The Company also shall comply with TIA § 314(a)(4). An Officers' Certificate shall also notify the Trustee should the then current Fiscal Year be changed to end on any date other than on the date as herein defined.

SECTION 3.21. *Additional Interest Notices.* In the event that the Company is required to pay additional interest to Holders pursuant to the Registration Rights Agreement, the Company shall provide written notice ("*Additional Interest Notice*") to the Trustee of its obligation to pay additional interest no later than five Business Days prior to the proposed payment date set for the amount of additional interest, and the Additional Interest Notice shall set forth the amount of additional interest to be paid by the Company on such Payment Date. The Trustee shall not at any time be under any duty or responsibility to any Holder to determine the additional interest, or with respect to the nature, extent, or calculation of the amount of additional interest when made, or with respect to the method employed in such calculation of the additional interest.

ARTICLE IV

Successor Company and Successor Guarantor

SECTION 4.1. *Merger and Consolidation.* The Company shall not consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person, *unless*:

(i) the resulting, surviving or transferee Person (the "*Successor Company*") shall be a corporation or a limited liability company, provided that in the case of a merger with a limited liability company there shall be a corporate co-issuer, in each case organized and existing under the laws of the United States of America, any State of the United States or the District of Columbia and the Successor Company (if not the Company) shall expressly assume, by supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, all the obligations of the Company under the Notes, this Indenture and the Registration Rights Agreement;

(ii) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any Subsidiary of the Successor Company as a result of such transaction as having been Incurred by the Successor Company or such Subsidiary at the time of such transaction), no Default or Event of Default shall have occurred and be continuing;

(iii) immediately after giving effect to such transaction, the Successor Company would be able to Incur at least an additional $1.00 of Indebtedness pursuant to paragraph (a) of *Section 3.3*;

(iv) each Guarantor (unless it is the other party to the transactions above, in which case clause (i) shall apply) shall have by supplemental indenture confirmed that its Note Guarantee shall apply to such Person's obligations in respect of this Indenture and the Notes and its obligations under the Registration Rights Agreement shall continue to be in effect; and

(v) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture.

For purposes of this *Article IV*, the sale, lease, conveyance, assignment, transfer, or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Company, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

The predecessor Company shall be released from its obligations under this Indenture and the Successor Company shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture, but, in the case of a lease of all or substantially all its assets, the predecessor Company shall not be released from the obligation to pay the principal of and interest on the Notes.

Notwithstanding the preceding clause (iii), (x) any Restricted Subsidiary may consolidate with, merge into or transfer all or part of its properties and assets to the Company and (y) the Company may merge with an Affiliate incorporated solely for the purpose of reincorporating the Company in another jurisdiction to realize tax benefits; *provided* that, in the case of a Restricted Subsidiary that merges into the Company, the Company shall not be required to comply with the preceding clause (v).

In addition, the Company shall not permit any Guarantor to consolidate with, merge with or into any Person (other than another Guarantor) and shall not permit the conveyance, transfer or lease of all or substantially all of the assets of any Guarantor to any Person (other than to another Guarantor) *unless*: (i) (a) if such entity remains a Guarantor, the resulting, surviving or transferee Person shall be a corporation, partnership, trust or limited liability company organized and existing under the laws of the United States of America, any State of the United States or the District of Columbia; (b) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the resulting, surviving or transferee Person or any Restricted Subsidiary as a result of such transaction as having been Incurred by such Person or such Restricted Subsidiary at the time of such transaction), no Default of Event of Default shall have occurred and be continuing; and (c) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture; and (ii) the transaction is made in compliance with *Section 3.8* (it being understood that only such portion of the Net Available Cash as is required to be applied on the date of such transaction in accordance with the terms of this Indenture needs to be applied in accordance therewith at such time) and this *Article IV*.

ARTICLE V

Redemption of Notes

SECTION 5.1. *Optional Redemption.* The Notes may be redeemed, as a whole or from time to time in part, subject to the conditions and at the redemption prices specified in paragraph 5 of the form of Notes set forth in Exhibit A and Exhibit B hereto, which are hereby incorporated by reference and made a part of this Indenture, together with accrued and unpaid interest to the Redemption Date (as defined below).

SECTION 5.2. *Applicability of Article.* Redemption of Notes at the election of the Company or otherwise, as permitted or required by any provision of this Indenture, shall be made in accordance with such provision and this Article.

SECTION 5.3. *Election to Redeem.* The election of the Company to redeem any Notes pursuant to *Section 5.1* shall be evidenced by a Board Resolution.

SECTION 5.4. *Selection by Trustee of Notes to Be Redeemed.* If less than all the Notes are to be redeemed at any time pursuant to an optional redemption, the particular Notes to be redeemed shall be selected not more than 60 days prior to the Redemption Date (as defined below) by the Trustee, from the outstanding Notes not previously called for redemption, in compliance with the requirements of the principal securities exchange, if any, on which such Notes are listed, or, if such Notes are not so listed, on a *pro rata* basis among the classes of Notes, by lot or by such other method as the Trustee shall deem fair and appropriate (and in such manner as complies with applicable legal requirements) and which may provide for the selection for redemption of portions of the principal of the Notes; although no Note of $1,000 in original principal amount or less will be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption relating to such Note will state the portion of the principal amount thereof to be redeemed.

The Trustee shall promptly notify the Company in writing of the Notes selected for redemption and, in the case of any Notes selected for partial redemption, the method it has chosen for the selection of Notes and the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to redemption of Notes shall relate, in the case of any Note redeemed or to be redeemed only in part, to the portion of the principal amount of such Note which has been or is to be redeemed.

SECTION 5.5. *Notice of Redemption.* Notice of redemption shall be given in the manner provided for in *Section 11.2* not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Notes to be redeemed. At the Company's request, the Trustee shall give notice of redemption in the Company's name and at the Company's expense; *provided, however*, that the Company shall deliver to the Trustee, at least 35 days (or such shorter period of time as shall be satisfactory to the Trustee) prior to the redemption date (the "Redemption Date") fixed by the Company or 15 days prior to the date on which notice is to be given to the Holders, an Officers' Certificate requesting that the Trustee give such notice at the Company's expense and setting forth the information to be stated in such notice as provided in the following items. Any such notice may be cancelled at any time prior to notice of such redemption being mailed to any Holder and shall thereby be void and of no effect.

All notices of redemption shall state:

(i) the Redemption Date,

(ii) the redemption price and the amount of accrued interest to the Redemption Date payable as provided in *Section 5.7*, if any,

(iii) if less than all outstanding Notes are to be redeemed, the method for selecting the Notes to be redeemed, as well as the aggregate principal amount of Notes to be redeemed and the aggregate principal amount of Notes to be outstanding after such partial redemption,

(iv) in case any Note is to be redeemed in part only, (a) the notice which relates to such Note shall state that on and after the Redemption Date, upon surrender of such Note, the Holder shall receive, without charge, a new Note or Notes of authorized denominations for the principal amount thereof remaining unredeemed and (b) such documentation and records as shall enable to Trustee to select the Notes to be redeemed pursuant to *Section 5.4*.

(v) that on the Redemption Date the redemption price (and accrued interest, if any, to the Redemption Date payable as provided in *Section 5.7*) shall become due and payable upon each such Note, or the portion thereof, to be redeemed, and, unless the Company defaults in making the redemption payment, that interest on Notes called for redemption (or the portion thereof) shall cease to accrue on and after said date,

(vi) the place or places where such Notes are to be surrendered for payment of the redemption price and accrued interest, if any,

(vii) the name and address of the Paying Agent,

(viii) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price,

(ix) the CUSIP number, that no representation is made as to the accuracy or correctness of the CUSIP number, if any, listed in such notice or printed on the Notes, and any redemption shall not be affected by any defect in such CUSIP numbers, and

(x) the paragraph of the Notes pursuant to which the Notes are to be redeemed.

SECTION 5.6. *Deposit of Redemption Price.* By 10:00 a.m., New York City time, on any Redemption Date, the Company shall deposit with the Paying Agent (or, if the Company or a Wholly Owned Subsidiary that is a Domestic Subsidiary is a Paying Agent, shall segregate and hold in trust as provided in *Section 2.4*) an amount of money sufficient to pay the redemption price of, and accrued interest on, all the Notes which are to be redeemed on that date other than Notes or portions of Notes called for redemption that are beneficially owned by the Company and have been delivered by the Company to the Trustee for cancellation.

SECTION 5.7. *Notes Payable on Redemption Date.* Notice of redemption having been given as aforesaid, the Notes or portions of Notes so to be redeemed shall, on the Redemption Date, become due and payable at the redemption price therein specified (together with accrued interest, if any, to the Redemption Date), and from and after such date (unless the Company shall default in the payment of the redemption price and accrued interest) such Notes shall cease to bear interest. Upon surrender of any such Note for redemption in accordance with said notice, such Note shall be paid by the Company at the redemption price, together with accrued interest, if any, to the Redemption Date (subject to the rights of Holders of record on the relevant record date to receive interest due on the relevant interest payment date).

If any Note called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate borne by the Notes.

SECTION 5.8. *Notes Redeemed in Part.* Any Note which is to be redeemed only in part (pursuant to the provisions of this Article) shall be surrendered at the office or agency of the Company maintained for such purpose pursuant to *Section 3.14* (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Note at the expense of the Company, a new Note or Notes, of any authorized denomination as requested by such Holder, in an aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Note so surrendered, *provided*, that each such new Note will be issued in denominations of $1,000 or an integral multiple thereof.

ARTICLE VI

Defaults and Remedies

SECTION 6.1. *Events of Default.* Each of the following is an "*Event of Default*":

(1) default in any payment of interest or additional interest (as required by the Registration Rights Agreement) on any Note when due, that continues for 30 days;

(2) default in the payment of principal of or premium, if any, on any Note when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise;

(3) failure by the Company or any Guarantor to comply with its obligations under *Article IV*;

(4) failure by the Company to comply for 30 days after notice as provided below with any of its obligations described under *Section 3.8* or *Section 3.10* (in each case, other than a failure to purchase Notes which shall constitute an Event of Default under clause (2) or clause (3) above;

(5) failure by the Company or any Restricted Subsidiary to comply for 60 days after notice as provided below with its other agreements in this Indenture or under the Notes (other than those referred to in (1), (2), (3) or (4) above);

(6) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is Guaranteed by the Company or any of its Restricted Subsidiaries), other than Indebtedness owed to the Company or a Restricted Subsidiary, whether such Indebtedness or Guarantee now exists, or is created after the date of this Indenture, which default:

(a) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the grace period provided in such Indebtedness ("*payment default*") or

(b) results in the acceleration of such Indebtedness prior to its maturity (the "*cross acceleration provision*");

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a payment default or the maturity of which has been so accelerated, aggregates $15.0 million or more;

(7) the Company or a Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries) would constitute a Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case or proceeding;

(B) consents to the entry of a judgment, decree or order for relief against it in an involuntary case or proceeding;

(C) consents to the appointment of a Custodian of it or for any substantial part of its property;

(D) makes a general assignment for the benefit of its creditors;

(E) consents to or acquiesces in the institution of a bankruptcy or an insolvency proceeding against it;

(F) takes any corporate action to authorize or effect any of the foregoing; or

(G) takes any comparable action under any foreign laws relating to insolvency;

(8) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief in an involuntary case against the Company or any Significant Subsidiary or a group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary pursuant to or within the meaning of the Bankruptcy Law;

(B) appoints a Custodian for all or substantially all of the property of the Company or any Significant Subsidiary or a group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries) would constitute a Significant Subsidiary pursuant to or within the meaning of the Bankruptcy Law;

(C) orders the winding up or liquidation of the Company or any Significant Subsidiary or a group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries) would constitute a Significant Subsidiary pursuant to or within the meaning of the Bankruptcy Law; and

(D) in each case, the order, decree or relief remains unstayed and in effect for 60 days;

(9) failure by the Company or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary to pay final judgments aggregating in excess of $15.0 million (net of any amounts that a reputable and creditworthy insurance company has acknowledged liability for in writing), which judgments are not paid, discharged or stayed for a period of 60 days (the "*judgment default provision*"); or

(10) any Note Guarantee ceases to be in full force and effect (except as contemplated by the terms of this Indenture) or is declared null and void in a judicial proceeding or any Guarantor denies or disaffirms its obligations under this Indenture or its Note Guarantee.

However, a default under clauses (4) and (5) of this paragraph shall not constitute an Event of Default until the Trustee or the Holders of 25% in principal amount of the outstanding Notes provide written notice to the Company of the default and the Company does not cure such default within the time specified in clauses (4) and (5) of this paragraph after receipt of such notice.

The foregoing shall constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

The Company shall deliver to the Trustee, promptly, but in no event later than 30 days after, a senior officer of the Company becomes aware of any events which would constitute an Event of Default under clauses (3), (4), (5), (6), (7), (8), (9) or (10) of this *Section 6.1* in the form of an Officers' Certificate, which Officers' Certificate shall provide their status and what action the Company is taking or proposing to take in respect thereof.

SECTION 6.2. *Acceleration.* If an Event of Default (other than an Event of Default described in clauses (7) and (8) of *Section 6.1*) occurs and is continuing, the Trustee by notice to the Company, or the Holders of at least 25% in principal amount of the outstanding Notes by written notice to the Company and the Trustee, may, and the Trustee at the request of such Holders shall, declare the principal of, premium, if any, and accrued and unpaid interest, if any, on all the Notes to be due and payable. Upon such a declaration, such principal, premium and accrued and unpaid interest shall be due and payable immediately.

In the event of a declaration of acceleration of the Notes because an Event of Default described in clause (6) of *Section 6.1* has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically annulled if the event of default or payment default triggering such Event of Default pursuant to clause (6) of *Section 6.1* shall be remedied or cured by the Company or a Restricted Subsidiary or waived by the holders of the relevant Indebtedness within 30 days after the declaration of acceleration with respect thereto and if (1) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, except nonpayment of principal, premium or interest on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived.

If an Event of Default described in clauses (7) and (8) of *Section 6.1* occurs and is continuing, the principal of, premium, if any, and accrued and unpaid interest on all the Notes shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

SECTION 6.3. *Other Remedies.* If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of (or premium, if any) or interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

SECTION 6.4. *Waiver of Past Defaults.* Subject to *Section 9.2*, the Holders of a majority in principal amount of the outstanding Notes by notice to the Trustee may waive (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) any continuing Default or Event of Default and its consequences *provided* that (1) such waiver would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, other than the nonpayment of the principal of, premium, if any, and interest on the Notes that have become due solely by such declaration of acceleration, have been cured or waived. When a Default or Event of Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any consequent right.

SECTION 6.5. *Control by Majority.* The Holders of a majority in principal amount of the outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to *Sections 7.1* and *7.2*, that the Trustee determines is unduly prejudicial to the rights of other Holders or would involve the Trustee in personal liability; *provided, however,* that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action hereunder, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

SECTION 6.6. *Limitation on Suits.* Subject to the provisions of this Indenture relating to the duties of the Trustee, if an Event of Default occurs and is continuing, the Trustee shall be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee reasonable indemnity or security against any loss, liability or expense. Except to enforce the right to receive payment of principal, premium, if any, or interest when due, no Holder may pursue any remedy with respect to this Indenture or the Notes *unless*:

(1) such Holder has previously given the Trustee notice that an Event of Default is continuing;

(2) Holders of at least 25% in principal amount of the outstanding Notes have requested the Trustee to pursue the remedy;

(3) such Holders have offered the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity; and

(5) the Holders of a majority in principal amount of the outstanding Notes have not given the Trustee a direction that, in the opinion of the Trustee, is inconsistent with such request within such 60-day period.

SECTION 6.7. *Rights of Holders to Receive Payment.* Notwithstanding any other provision of this Indenture (including, without limitation, *Section 6.6*), the right of any Holder to receive payment of principal of, premium, if any, or interest on the Notes held by such Holder, on or after the respective due dates expressed in the Notes, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

SECTION 6.8. *Collection Suit by Trustee.* If an Event of Default specified in clauses (1) or (2) of *Section 6.1* occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount then due and owing (together with interest on any unpaid interest to the extent lawful) and the amounts provided for in *Section 7.7*.

SECTION 6.9. *Trustee May File Proofs of Claim.* The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company, its Subsidiaries or its or their respective creditors or properties and, unless prohibited by law or applicable regulations, may be entitled and empowered to participate as a member of any official committee of creditors appointed in such matter and may vote on behalf of the Holders in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it, its agents and its counsel pursuant to *Section 7.7* and any other amounts due the Trustee hereunder. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 6.10. *Priorities.* If the Trustee collects any money or property pursuant to this *Article VI*, it shall pay out the money or property in the following order:

First:	to the Trustee for amounts due under *Section 7.7*;
Second:	to Holders for amounts due and unpaid on the Notes for principal and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal and interest, respectively; and
Third:	to the Company.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section. At least 15 days before such record date, the Company shall mail to each Holder and the Trustee a notice that states the record date, the payment date and amount to be paid.

SECTION 6.11. *Undertaking for Costs.* In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by the Company, a suit by a Holder pursuant to *Section 6.7* or a suit by Holders of more than 10% in outstanding principal amount of the Notes.

ARTICLE VII

Trustee

SECTION 7.1. *Duties of Trustee.* (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs; *provided* that if an Event of Default occurs and is continuing, the Trustee shall be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered the Trustee indemnity or security satisfactory to the Trustee against loss, liability or expense.

(b) Except during the continuance of an Event of Default:

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall examine such certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or otherwise verify the contents thereof).

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of paragraph (b) of this Section;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to *Section 6.5* or *Section 6.6*.

(d) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company.

(e) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(f) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(g) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section and to the provisions of the TIA.

(h) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction.

SECTION 7.2. *Rights of Trustee.* (a) The Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any paper or document believed by it to be genuine and to have been signed or presented by the proper Person or Persons. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officers' Certificate or Opinion of Counsel.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; *provided, however*, that the Trustee's conduct does not constitute willful misconduct or negligence.

(e) The Trustee may consult with counsel of its selection, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Notes shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, notice, request, direction, consent, order, bond or other paper or document; but the Trustee may make such further inquiry or investigation into such facts or matters as it may see fit and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company and its Subsidiaries at reasonable times and in a reasonable manner, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(g) The Trustee shall not be deemed to have knowledge of any Default or Event of Default except (i), during any period it is serving as Registrar and Paying Agent for the Notes, any Event of Default occurring pursuant to *Section 6.1(1)* and *6.1(2)*, or (ii) any Default or Event of Default of which a Responsible Officer shall have received written notification or obtained "actual knowledge." "Actual knowledge" shall mean the actual fact or statement of knowing by a Responsible Officer without independent investigation with respect thereto.

(h) Delivery of the reports, information and documents to the Trustee pursuant to *Section 3.2* is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

(i) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(j) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(k) The Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

SECTION 7.3. *Individual Rights of Trustee.* The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar or co-paying agent may do the same with like rights. However, the Trustee must comply with *Sections 7.10* and *7.11*. In addition, the Trustee shall be permitted to engage in transactions with the Company; *provided*, *however*, that if the Trustee acquires any conflicting interest the Trustee must (i) eliminate such conflict within 90 days of acquiring such conflicting interest, (ii) apply to the SEC for permission to continue acting as Trustee or (iii) resign.

SECTION 7.4. *Trustee's Disclaimer.* The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Company's use of the Notes or the proceeds from the Notes, and it shall not be responsible for any statement of the Company in this Indenture or in any document issued in connection with the sale of the Notes or in the Notes other than the Trustee's certificate of authentication or for the use or application of any funds received by any Paying Agent other than the Trustee.

SECTION 7.5. *Notice of Defaults.* If a Default or Event of Default occurs and is continuing and if a Responsible Officer has actual knowledge thereof, the Trustee shall mail to each Holder notice of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or Event of Default in payment of principal of, premium (if any), or interest on any Note (including payments pursuant to the required repurchase provisions of such Note, if any), the Trustee may withhold the notice if and so long as its board of directors, a committee of its board of directors or a committee of its Responsible Officers and/or a Responsible Officer in good faith determines that withholding the notice is in the interests of Holders.

SECTION 7.6. *Reports by Trustee to Holders.* As promptly as practicable after each September 15 beginning with the September 15 following the date of this Indenture, and in any event prior to October 15 in each year, the Trustee shall mail to each Holder a brief report dated as of such September 15 that complies with TIA § 313(a), if and to the extent such report may be required by the TIA. The Trustee also shall comply with TIA § 313(b). The Trustee shall also transmit by mail all reports required by TIA § 313(c).

A copy of each report at the time of its mailing to Holders shall be filed with the SEC and each stock exchange (if any) on which the Notes are listed. The Company agrees to notify promptly the Trustee in writing whenever the Notes become listed on any stock exchange and of any delisting thereof.

SECTION 7.7. *Compensation and Indemnity.* The Company and the Guarantors, jointly and severally, shall pay to the Trustee from time to time such compensation for its services as the parties shall agree in writing from time to time. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company and the Guarantors, jointly and severally, shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses, disbursements and advances incurred or made by it, including, but not limited to, costs of collection, costs of preparing and reviewing reports, certificates and other documents, costs of preparation and mailing of notices to Holders and reasonable costs of counsel retained by the Trustee in connection with the delivery of an Opinion of Counsel or otherwise, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Company and the Guarantors, jointly and severally, shall indemnify the Trustee, and each of its officers, directors, counsel and agents, against any and all loss, liability or expense (including, but not limited to, reasonable attorneys' fees and expenses) and taxes (other than those based upon or determined by the income of the Trustee) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder, including the costs and expenses of enforcing this Indenture (including this *Section 7.7*) and the Notes and of defending itself against any claims (whether asserted by any Holder, the Company or otherwise). The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee may have separate counsel and the Company shall pay the fees and expenses of such counsel. The Company and the Guarantors need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct, negligence or bad faith, subject to the exceptions contained in *Section 7.1(c)* hereof.

To secure the Company's and the Guarantors' payment obligations in this Section, the Trustee shall have a lien prior to the Notes on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Notes. The Trustee's right to receive payment of any amounts due under this *Section 7.7* shall not be subordinate to any other liability or indebtedness of the Company or the Guarantors.

The Company's payment obligations pursuant to this Section and any lien arising hereunder shall survive the discharge of this Indenture and the resignation or removal of the Trustee. When the Trustee incurs expenses after the occurrence of a Default specified in *Section 6.1(7)* or *(8)*, the expenses are intended to constitute expenses of administration under any Bankruptcy Law.

SECTION 7.8. *Replacement of Trustee.* The Trustee may resign at any time by so notifying the Company. The Holders of a majority in principal amount of the Notes may remove the Trustee by so notifying the Company and the Trustee in writing and may appoint a successor Trustee. The Company shall remove the Trustee if:

(1) the Trustee fails to comply with Section 7.10;

(2) the Trustee is adjudged bankrupt or insolvent;

(3) a receiver or other public officer takes charge of the Trustee or its property; or

(4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed by the Company or by the Holders of a majority in principal amount of the Notes and such Holders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Company shall promptly appoint a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, *provided* that all sums owing to the Trustee hereunder have been paid and subject to the lien provided for in *Section 7.7*.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Holders of 10% in principal amount of the Notes may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with *Section 7.10*, unless the Trustee's duty to resign is stayed as provided in TIA § 310(b), any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding the replacement of the Trustee pursuant to this *Section 7.8*, the Company's obligations under *Section 7.7* shall continue for the benefit of the retiring Trustee.

SECTION 7.9. *Successor Trustee by Merger.* If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation, banking association or other entity, the resulting, surviving or transferee entity without any further act shall be the successor Trustee.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have.

SECTION 7.10. *Eligibility; Disqualification.* The Trustee shall at all times satisfy the requirements of TIA § 310(a). The Trustee shall have a combined capital and surplus of at least $50 million as set forth in its most recent filed annual report of condition. The Trustee shall comply with TIA § 310(b).

SECTION 7.11. *Preferential Collection of Claims Against Company.* If and when the Trustee shall be or become a creditor of the Company, the Trustee shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated.

ARTICLE VIII

Discharge of Indenture; Defeasance

SECTION 8.1. *Discharge of Liability on Notes; Defeasance.* (a) Subject to *Section 8.1(c)*, when (i)(x) the Company delivers to the Trustee all outstanding Notes (other than Notes replaced pursuant to *Section 2.10*) for cancellation or (y) all outstanding Notes not theretofore delivered for cancellation have become due and payable at maturity, whether at maturity or upon redemption or shall become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption pursuant to *Article V* hereof and the Company or any Guarantor irrevocably deposits or causes to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders money in U.S. dollars, non-callable U.S. Government Obligations, or a combination thereof, in such amounts as shall be sufficient without consideration of any reinvestment of interest to pay and discharge the entire indebtedness on such Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption; (ii) no Default or Event of Default shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit shall not result in a breach or violation of, or constitute a default under, any other instrument to which the Company or any Guarantor is a party or by which the Company or any Guarantor is bound; (iii) the Company or any Guarantor has paid or cause to be paid all sums payable under this Indenture and the Notes; and (iv) the Company has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of such Notes at maturity or the Redemption Date, as the case may be, then the Trustee shall acknowledge satisfaction and discharge of this Indenture on demand of the Company (accompanied by an Officers' Certificate and an Opinion of Counsel stating that all conditions precedent specified herein relating to the satisfaction and discharge of this Indenture have been complied with) at the cost and expense of the Company.

(b) Subject to *Sections 8.1(c)* and *8.2*, the Company at its option and at any time may terminate (i) all the obligations of the Company and any Guarantor under the Notes, the Note Guarantees and this Indenture ("*legal defeasance option*"), and after giving effect to such legal defeasance, any omission to comply with such obligations shall no longer constitute a Default or Event of Default or (ii) the obligations of the Company and any Guarantor under *Sections 3.2*, *3.3*, *3.4*, *3.5*, *3.6*, *3.7*, *3.8*, *3.9*, *3.10*, *3.11*, *3.12*, *3.13* and *3.18* (other than 4.1), (iii) and the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant or provision, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or provision or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply with such covenants or provisions shall no longer constitute a Default or an Event of Default under *Sections 6.1(4)*, *6.1(5)*, *6.1(6)*, *6.1(7)*, *6.1(8)*, *6.1(9)* and *6.1(10)* ("*covenant defeasance option*"), but except as specified above, the remainder of this Indenture and the Notes shall be unaffected thereby. The Company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option.

If the Company exercises its legal defeasance option, payment of the Notes may not be accelerated because of an Event of Default, and the Note Guarantees in effect at such time shall terminate. If the Company exercises its covenant defeasance option, payment of the Notes may not be accelerated because of an Event of Default specified in *Sections 6.1(3)* (but only as it relates to an Event of Default as a result of a default under *Section 4.1(iii)), 6.1(4), 6.1(5)* (as such Section relates to *Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.13,* and *3.18) , 6.1(6), 6.1(7)* (but only with respect to a Significant Subsidiary or a group of Restricted Subsidiaries that would constitute a Significant Subsidiary), *6.1(8)* (but only with respect to a Significant Subsidiary or a group of Restricted Subsidiaries that would constitute a Significant Subsidiary), *6.1(9)* and *6.1(10)* or because of the failure to comply with clause (iii) of *Article IV*.

Upon satisfaction of the conditions set forth herein and upon request of the Company, the Trustee shall acknowledge in writing the discharge of those obligations that the Company terminates.

(c) Notwithstanding the provisions of *Sections 8.1(a)* and *(b)*, the Company's obligations in *Sections 2.3*, *2.4*, *2.5*, *2.6*, *2.7*, *2.8*, *2.9*, *7.1*, *7.2*, *7.7*, *7.8*, *8.4*, *8.5* and *8.6* shall survive until the Notes have been paid in full. Thereafter, the Company's and the Guarantors' obligations in *Sections 7.7*, *8.4* and *8.5* shall survive.

SECTION 8.2. *Conditions to Defeasance.* The Company may exercise its legal defeasance option or its covenant defeasance option only if:

(1) the Company irrevocably deposits in trust with the Trustee for the benefit of the Holders money in U.S. dollars or U.S. Government Obligations or a combination thereof the principal of and interest (without reinvestment) on which shall be sufficient, or a combination thereof sufficient, for the payment of principal, premium, if any, and interest on the Notes to redemption or maturity;

(2) the Company delivers to the Trustee a certificate from a nationally recognized firm of independent accountants expressing their opinion that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment shall provide cash at such times and in such amounts as shall be sufficient to pay principal, premium, if any, and interest when due on all the Notes to redemption or maturity;

(3) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default with respect to this Indenture resulting from the incurrence of Indebtedness, all or a portion of which shall be used to defease the Notes concurrently with such incurrence);

(4) such legal defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a Default under this Indenture or any other material agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound;

(5) the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that (A) the Notes and (B) assuming no intervening bankruptcy of the Company between the date of deposit and the 91st day following the deposit and that no Holder is an insider of the Company, after the 91st day following the deposit, the trust funds shall not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' right generally;

(6) the deposit does not constitute a default under any other agreement binding on the Company;

(7) the Company delivers to the Trustee an Opinion of Counsel to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940;

(8) in the case of the legal defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel in the United States stating that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) since the date of this Indenture there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders shall not recognize income, gain or loss for federal income tax purposes as a result of such legal defeasance and shall be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such legal defeasance had not occurred;

(9) in the case of the covenant defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel in the United States to the effect that the Holders shall not recognize income, gain or loss for federal income tax purposes as a result of such covenant defeasance and shall be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred; and

(10) the Company delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Notes and this Indenture as contemplated by this *Article VIII* have been complied with.

SECTION 8.3. *Application of Trust Money.* The Trustee shall hold in trust money or U.S. Government Obligations deposited with it pursuant to this *Article VIII*. It shall apply the deposited money and the money from U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Notes.

SECTION 8.4. *Repayment to Company.* Anything herein to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Order any money or U.S. Government Obligations held by it as provided in this *Article VIII* which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect legal defeasance or covenant defeasance, as applicable, *provided* that the Trustee shall not be required to liquidate any U.S. Government Obligations in order to comply with the provisions of this paragraph.

Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Company upon written request any money held by them for the payment of principal of or interest on the Notes that remains unclaimed for two years, and, thereafter, Holders entitled to the money must look to the Company for payment as general creditors.

SECTION 8.5. *Indemnity for U.S. Government Obligations.* The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

SECTION 8.6. *Reinstatement.* If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this *Article VIII* by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to this *Article VIII* until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this *Article VII*; *provided, however*, that, if the Company has made any payment of interest on or principal of any Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

ARTICLE IX

Amendments

SECTION 9.1. *Without Consent of Holders.* The Company, the Guarantors and the Trustee may amend or supplement this Indenture, a Note Guarantee or the Notes without notice to or consent of any Holder to:

(1) cure any ambiguity, omission, defect, mistake or inconsistency;

(2) provide for the assumption by a successor entity of the obligations of the Company or any Guarantor under this Indenture;

(3) provide for uncertificated Notes in addition to or in place of certificated Notes (*provided*, that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the Code);

(4) add Guarantees with respect to the Notes or release a Guarantor upon its designation as an Unrestricted Subsidiary; *provided*, *however*, that the designation is in accordance with the applicable provisions of this Indenture;

(5) secure the Notes;

(6) add to the covenants of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company;

(7) provide additional rights or benefits of the Holders or make any change that does not adversely affect the rights of any Holder;

(8) comply with any requirement of the SEC in connection with the qualification of this Indenture under the TIA;

(9) release a Guarantor from its obligations under its Note Guarantee or this Indenture in accordance with the provisions of this Indenture;

(10) provide for the appointment of a successor trustee; *provided* that the successor trustee is otherwise qualified and eligible to act as such under the terms of this Indenture;

(11) provide for the issuance of the Exchange Notes which shall have terms substantially identical in all respects to the Notes (except that the transfer restrictions contained in the Notes shall be modified or eliminated, as appropriate) and which shall be treated, together with any outstanding Notes, as a single class of securities; or

(12) to conform the text of this Indenture, the Notes or the Note Guarantees to any provision of the "Description of notes" section of the Offering Memorandum to the extent that such provision in the "Description of notes" section of the Offering Memorandum was intended to be a verbatim recitation of a provision in this Indenture, the Notes or the Note Guarantees (other than with respect to clause (8) of the definition of Consolidated EBITDA).

After an amendment or supplement under this Section becomes effective, the Company shall mail to Holders a notice briefly describing such amendment or supplement. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment or supplement under this Section.

SECTION 9.2. *With Consent of Holders.* The Company, the Guarantors and the Trustee may amend or supplement this Indenture, a Note Guarantee or the Notes without notice to any Holder but with the written consent of the Holders of at least a majority in principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes). Any past default or compliance with any provision of this Indenture, a Note Guarantee or the Notes may be waived with the written consent of the Holders of a majority in principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes). However, without the consent of each Holder affected, an amendment, supplement or waiver may not (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of Notes outstanding whose Holders must consent to an amendment;

(2) reduce the stated rate of or extend the stated time for payment of interest or additional interest on any Note;

(3) reduce the principal of or extend the Stated Maturity of any Note;

(4) reduce the premium payable upon the redemption of any Note or change the time at which any Note may or shall be redeemed as described under *Section 3.8* or *Article V* or any similar provision, whether through an amendment or waiver of *Section 3.8* or *Article V*, related definitions or otherwise;

(5) make any Note payable in money other than that stated in the Note;

(6) impair the right of any Holder to receive payment of principal, premium, if any, and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes;

(7) make any change to the amendment provisions which require each Holder's consent or to the waiver provisions; or

(8) modify the Note Guarantees in any manner adverse to the Holders.

It shall not be necessary for the consent of the Holders under this Section to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof. A consent to any amendment or waiver under this Indenture by any Holder given in connection with a tender of such Holder's Notes will not be rendered invalid by such tender. After an amendment under this Section becomes effective, the Company shall mail to Holders a notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section.

SECTION 9.3. *Compliance with Trust Indenture Act.* Every amendment or supplement to this Indenture, a Note Guarantee or the Notes shall comply with the TIA as then in effect.

SECTION 9.4. *Revocation and Effect of Consents and Waivers.* A consent to an amendment, supplement or a waiver by a Holder of a Note shall bind the Holder and every subsequent Holder of that Note or portion of the Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent or waiver is not made on the Note. Any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder's Note or portion of the Note if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver becomes effective or otherwise in accordance with any related solicitation documents. After an amendment, supplement or waiver becomes effective, it shall bind every Holder unless it makes a change described in any of clauses (1) through (8) of *Section 9.2*, in which case the amendment, supplement, waiver or other action shall bind each Holder who has consented to it and every subsequent Holder that evidences the same debt as the consenting Holder's Notes. An amendment, supplement or waiver shall become effective upon receipt by the Trustee of the requisite number of written consents under *Section 9.1* or *9.2* as applicable.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall become valid or effective more than 120 days after such record date.

SECTION 9.5. *Notation on or Exchange of Notes.* If an amendment, supplement or waiver changes the terms of a Note, the Trustee may require the Holder of the Note to deliver it to the Trustee. The Trustee may place an appropriate notation on the Note regarding the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determine, the Company in exchange for the Note shall issue and the Trustee shall authenticate a new Note that reflects the changed terms. Failure to make the appropriate notation or to issue a new Note shall not affect the validity of such amendment.

SECTION 9.6. *Trustee To Sign Amendments.* The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this *Article IX* if the amendment, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing any amendment, supplement or waiver the Trustee shall be entitled to receive indemnity reasonably satisfactory to it and to receive, and (subject to *Sections 7.1* and *7.2*) shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by this Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Company and any Guarantors, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof (including *Section 9.3*).

ARTICLE X

Note Guarantees

SECTION 10.1. *Guarantees.* The Guarantors hereby unconditionally guarantee, on a senior unsecured basis and as primary obligor and not merely as surety, jointly and severally with each other Guarantor, to each Holder and the Trustee the full and punctual payment when due, whether at maturity, by acceleration, by redemption or otherwise, of the principal of, premium, if any, and interest on the Notes, all other obligations and liabilities of the Company under this Indenture (including without limitation interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Company or any Guarantor whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) and any and all costs (including reasonable counsel fees and expenses) Incurred by the trustee or the Holders in enforcing any rights under the Note Guarantees (all the foregoing being hereinafter collectively called the "*Obligations*"). The Obligations of Guarantors under the Note Guarantees shall rank equally in right of payment with other Indebtedness of such Guarantor, except to the extent such other Indebtedness is expressly subordinated to the obligations arising under the Note Guarantee. Each Guarantor further agrees (to the extent permitted by law) that the Obligations may be extended or renewed, in whole or in part, without notice or further assent from it, and that it shall remain bound under this *Article X* notwithstanding any extension or renewal of any Obligation.

Each Guarantor waives presentation to, demand of payment from and protest to the Company of any of the Obligations and also waives notice of protest for nonpayment. Each Guarantor waives notice of any default under the Notes or the Obligations. The obligations of each Guarantor hereunder shall not be affected by (a) the failure of any Holder to assert any claim or demand or to enforce any right or remedy against the Company or any other person under this Indenture, the Notes or any other agreement or otherwise; (b) any extension or renewal of any thereof; (c) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Notes or any other agreement; (d) the release of any security held by any Holder or the Trustee for the Obligations or any of them; (e) the failure of any Holder to exercise any right or remedy against any other Guarantor; or (f) any change in the ownership of the Company.

Each Guarantor further agrees that its Guarantee herein constitutes a Guarantee of payment when due (and not a Guarantee of collection) and waives any right to require that any resort be had by any Holder to any security held for payment of the Obligations.

The obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than payment of the Obligations in full), including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any Holder to assert any claim or demand or to enforce any remedy under this Indenture, the Notes or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of any Guarantor or would otherwise operate as a discharge of such Guarantor as a matter of law or equity.

Each Guarantor agrees that its Guarantee herein shall remain in full force and effect until payment in full of all the Obligations or such Guarantor is released from its Guarantee upon the merger or the sale of all the Capital Stock or assets of the Guarantor in compliance with *Section 10.2* or otherwise in accordance with the terms of this Indenture. Each Guarantor further agrees that its Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on any of the Obligations is rescinded or must otherwise be restored by any Holder upon the bankruptcy or reorganization of the Company or otherwise.

In furtherance of the foregoing and not in limitation of any other right which any Holder has at law or in equity against any Guarantor by virtue hereof, upon the failure of the Company to pay any of the Obligations when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, each Guarantor hereby promises to and shall, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Holders an amount equal to the sum of (i) the unpaid amount of such Obligations then due and owing and (ii) accrued and unpaid interest on such Obligations then due and owing (but only to the extent not prohibited by law).

Each Guarantor further agrees that, as between such Guarantor, on the one hand, and the Holders, on the other hand, (x) the maturity of the Obligations guaranteed hereby may be accelerated as provided in this Indenture for the purposes of its Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Obligations guaranteed hereby and (y) in the event of any such declaration of acceleration of such Obligations, such Obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantor for the purposes of this Guarantee.

Each Guarantor also agrees to pay any and all reasonable costs and expenses (including reasonable attorneys' fees) incurred by the Trustee or the Holders in enforcing any rights under this Section.

SECTION 10.2. *Limitation on Liability; Termination, Release and Discharge.*

(a) The obligations of each Guarantor hereunder shall be limited to the maximum amount as shall, after giving effect to all other contingent and fixed liabilities of such Guarantor (including, without limitation, any guarantees under the Senior Secured Credit Agreement) and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Note Guarantee or pursuant to its contribution obligations under this Indenture, result in the obligations of such Guarantor under its Note Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law and not otherwise being void or voidable under any similar laws affecting the rights of creditors generally.

(b) In the event a Guarantor is sold or disposed of (whether by merger, consolidation, the sale of its Capital Stock or the sale of all or substantially all of its assets (other than by lease)) and whether or not the Guarantor is the surviving corporation in such transaction to a Person which is not the Company or a Restricted Subsidiary of the Company, such Guarantor shall be released (without any further action on the part of any Person) from all its obligations under this Indenture, its Note Guarantee and the Registration Rights Agreement if: (1) the sale or other disposition is in compliance with this Indenture, including *Section 3.8* (it being understood that only such portion of the Net Available Cash as is required to be applied on or before the date of such release in accordance with the terms of this Indenture needs to be applied in accordance therewith at such time) and *Article IV*; and (2) all the obligations of such Guarantor under all Credit Facilities and related documentation and any other agreements relating to any other Indebtedness of the Company or its Restricted Subsidiaries terminate upon consummation of such transaction.

(c) Each Guarantor shall be deemed released from all its obligations under this Indenture, its Note Guarantee and the Registration Rights Agreement and such Note Guarantee shall terminate upon the satisfaction and discharge of this Indenture or upon the legal defeasance or covenant defeasance of the Notes, in each case, pursuant to the provisions of *Article VIII* hereof.

(d) A Guarantor shall be deemed released from all of its obligations under this Indenture, its Note Guarantee and the Registration Rights Agreement and such Note Guarantee shall terminate if the Company designates such Guarantor as an Unrestricted Subsidiary and such designation complies with the applicable provisions of this Indenture.

SECTION 10.3. *Right of Contribution.* Each Guarantor hereby agrees that to the extent that any Guarantor shall have paid more than its proportionate share of any payment made on the obligations under the Note Guarantees, such Guarantor shall be entitled to seek and receive contribution from and against the Company or any other Guarantor who has not paid its proportionate share of such payment. The provisions of this *Section 10.3* shall in no respect limit the obligations and liabilities of each Guarantor to the Trustee and the Holders, and each Guarantor shall remain liable to the Trustee and the Holders for the full amount guaranteed by such Guarantor hereunder.

SECTION 10.4. *No Subrogation.* Notwithstanding any payment or payments made by Guarantor hereunder, no Guarantor shall be entitled to be subrogated to any of the rights of the Trustee or any Holder against the Company or any other Guarantor or any collateral security or guarantee or right of offset held by the Trustee or any Holder for the payment of the Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from the Company or any other Guarantor in respect of payments made by such Guarantor hereunder, until all amounts owing to the Trustee and the Holders by the Company on account of the Obligations are paid in full. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full, such amount shall be held by such Guarantor in trust for the Trustee and the Holders, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Trustee in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Trustee, if required), to be applied against the Obligations.

SECTION 10.5. *Execution and Delivery of Note Guarantee.* To evidence its Note Guarantee set forth in *Section 10.1*, each Guarantor hereby agrees that a notation of such Note Guarantee substantially in the form included in Exhibit C shall be endorsed by an Officer of such Guarantor on each Note authenticated and delivered by the Trustee and that this Indenture shall be executed on behalf of such Guarantor by an Officer.

Each Guarantor hereby agrees that its Note Guarantee set forth in *Section 10.1* shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Note Guarantee.

If an Officer whose signature is on this Indenture or on the Note Guarantee no longer holds that office at the time the Trustee authenticates the Note on which a Note Guarantee is endorsed, the Note Guarantee shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Note Guarantee set forth in this Indenture on behalf of the Guarantors.

ARTICLE XI

Miscellaneous

SECTION 11.1. *Trust Indenture Act Controls.* If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the provision required by the TIA shall control.

SECTION 11.2. *Notices.* Any notice or communication shall be in writing and delivered in person or mailed by first-class mail addressed as follows:

if to the Company:

Dave & Busters, Inc.
2481 Mañana Drive
Dallas, Texas 75220
Attention: James W. Corley
Facsimile No.: (214) 357-1536

if to the Trustee:

The Bank of New York Trust Company, N.A.
Plaza of the Americas
600 North Pearl Street, Suite 420
Dallas, Texas 75201

The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Holder shall be mailed to the Holder at the Holder's address as it appears on the Note Register and shall be sufficiently given if so mailed within the time prescribed.

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

SECTION 11.3. *Communication by Holders with other Holders.* Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

SECTION 11.4. *Certificate and Opinion as to Conditions Precedent.* Upon any request or application by the Company to the Trustee to take or refrain from taking any action under this Indenture, except upon the initial issuance of Notes hereunder, the Company shall furnish to the Trustee:

(1) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 11.5. *Statements Required in Certificate or Opinion.* Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(1) a statement that the individual making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

In giving such Opinion of Counsel, counsel may rely as to factual matters on an Officers' Certificate or on certificates of public officials.

SECTION 11.6. *When Notes Disregarded.* In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company or by any of its Affiliates (except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes which a Responsible Officer of the Trustee actually knows are so owned) shall be so disregarded. Also, subject to the foregoing, only Notes outstanding at the time shall be considered in any such determination.

SECTION 11.7. *Rules by Trustee, Paying Agent and Registrar.* The Trustee may make reasonable rules for action by, or a meeting of, Holders. The Registrar and the Paying Agent may make reasonable rules for their functions.

SECTION 11.8. *Legal Holidays.* A "Legal Holiday" is a Saturday, a Sunday or other day on which commercial banking institutions are authorized or required to be closed in New York City. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

SECTION 11.9. *Governing Law.* This Indenture, the Note Guarantees and the Notes shall be governed by, and construed in accordance with, the laws of the State of New York.

SECTION 11.10. *No Recourse Against Others.* An incorporator, director, officer, employee, stockholder or controlling person, as such, of the Company shall not have any liability for any obligations of the Company under the Notes or the Note Guarantees or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Holder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Notes.

SECTION 11.11. *Successors.* All agreements of the Company in this Indenture and the Notes shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 11.12. *Multiple Originals.* The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

SECTION 11.13. *Variable Provisions.* The Company initially appoints the Trustee as Paying Agent and Registrar and custodian with respect to any Global Notes.

SECTION 11.14. *Qualification of Indenture.* The Company shall qualify this Indenture under the TIA in accordance with the terms and conditions of the Registration Rights Agreement and shall pay all reasonable costs and expenses (including attorneys' fees and expenses for the Company and the Trustee) incurred in connection therewith, including, but not limited to, costs and expenses of qualification of this Indenture and the Notes and printing this Indenture and the Notes. The Trustee shall be entitled to receive from the Company any such Officers' Certificates, Opinions of Counsel or other documentation as it may reasonably request in connection with any such qualification of this Indenture under the TIA.

SECTION 11.15. *Table of Contents; Headings.* The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

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

DAVE & BUSTERS, INC.

By: _____

Name:
Title:

D&B LEASING, INC.
D&B REALTY HOLDING, INC.
DANB TEXAS, INC.
DAVE & BUSTER'S I, L.P.
DAVE & BUSTER'S MANAGEMENT CORPORATION, INC.
DAVE & BUSTER'S OF CALIFORNIA, INC.
DAVE & BUSTER'S OF COLORADO, INC.
DAVE & BUSTER'S OF FLORIDA, INC.
DAVE & BUSTER'S OF GEORGIA, INC.
DAVE & BUSTER'S OF HAWAII, INC.
DAVE & BUSTER'S OF ILLINOIS, INC.
DAVE & BUSTER'S OF KANSAS, INC.
DAVE & BUSTER'S OF MARYLAND, INC.
DAVE & BUSTER'S OF NEBRASKA, INC.
DAVE & BUSTER'S OF NEW YORK, INC.
DAVE & BUSTER'S OF PENNSYLVANIA, INC.
DAVE & BUSTER'S OF PITTSBURGH, INC.
TANGO ACQUISITION, INC.
TANGO LICENSE CORPORATION
TANGO OF ARIZONA, INC.
TANGO OF ARUNDEL, INC.
TANGO OF FARMINGDALE, INC.
TANGO OF FRANKLIN, INC.
TANGO OF HOUSTON, INC.
TANGO OF MINNESOTA, INC.
TANGO OF NORTH CAROLINA, INC.
TANGO OF SUGARLOAF, INC.
TANGO OF TENNESSEE, INC.
TANGO OF WESTBURY, INC.

By: _____

Name:
Title:

THE BANK OF NEW YORK TRUST
COMPANY, N.A., as Trustee

By: _____

Name:
Title:

[FORM OF FACE OF SERIES A NOTE]

[Applicable Restricted Notes Legend]
[Depositary Legend, if applicable]

No. [_____]

Principal Amount $[_____],
as revised by the Schedule of Increases
and Decreases in the Global Note attached hereto

CUSIP NO. _____

DAVE & BUSTERS, INC.

$11^{1}/_{4}$% Senior Note, Series A, due 2014

Dave & Busters, Inc., a Missouri corporation, promises to pay to Cede & Co., or registered assigns, the principal sum of $[_____], as revised by the Schedule of Increases and Decreases in the Global Note attached hereto, on March 15, 2014.

Interest Payment Dates: March 15 and September 15.
Record Dates: March 1 and September 1.
Additional provisions of this Note are set forth on the other side of this Note.

DAVE & BUSTERS, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF
AUTHENTICATION

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.

as Trustee, certifies that this is one of
the Notes referred to in the Indenture.

By _____
Authorized Signatory

[FORM OF REVERSE SIDE OF SERIES A NOTE]

$11^{1}/_{4}$% Senior Note, Series A, due 2014

1. *Interest*

Dave & Busters, Inc., a Missouri corporation (such corporation, and its successors and assigns under the Indenture hereinafter referred to, being herein called the "Company"), promises to pay interest on the principal amount of this Note at the rate per annum shown above.

The Company shall pay interest semiannually on March 15 and September 15 of each year. Interest on the Notes shall accrue from the most recent date to which interest has been paid on the Notes or, if no interest has been paid, from March 8, 2006. The Company shall pay interest on overdue principal or premium, if any (plus interest on such interest to the extent lawful), at the rate borne by the Notes to the extent lawful. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

2. *Method of Payment*

By no later than 10:00 a.m. (New York City time) on the date on which any principal of (premium, if any) or interest on any Note is due and payable, the Company shall irrevocably deposit with the Trustee or the Paying Agent money sufficient to pay such principal, premium, if any, and/or interest. The Company shall pay interest (except Defaulted Interest) to the Persons who are registered Holders at the close of business on the March 15 and September 15 next preceding the interest payment date even if Notes are cancelled or repurchased after the record date and on or before the interest payment date. Holders must surrender Notes to a Paying Agent to collect principal payments. The Company shall pay principal, premium, if any, and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of Notes represented by a Global Note (including principal, premium, if any, and interest) shall be made by the transfer of immediately available funds to the accounts specified by the Depositary. The Company shall make all payments in respect of a Definitive Note (including principal, premium, if any, and interest) by mailing a check to the registered address of each Holder thereof as such address shall appear on the Note Register; *provided*, *however*, that payments on the Notes represented by Definitive Notes may also be made, in the case of a Holder of at least $1,000,000 aggregate principal amount of Notes represented by Definitive Notes, by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 15 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept).

3. *Paying Agent and Registrar*

Initially, The Bank of New York Trust Company, N.A., the trustee under the Indenture ("Trustee"), shall act as Paying Agent and Registrar. The Company may appoint and change any Paying Agent or Registrar without notice to any Holder. The Company or any Wholly Owned Subsidiary that is a Domestic Subsidiary may act as Paying Agent or Registrar.

4. *Indenture*

The Company issued the Notes under an Indenture dated as of March 8, 2006 (as it may be amended or supplemented from time to time in accordance with the terms thereof, the "Indenture"), among the Company, the Guarantors and the Trustee. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 *U.S.C.* §§77aaa-77bbbb) as in effect from time to time (the "Act"). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture and the Act for a statement of those terms.

The Notes are general unsecured senior obligations of the Company. The aggregate principal amount of Notes which may be authenticated and delivered under the Indenture is unlimited. This Note is one of the 11 1/4% Senior Notes, Series A, due 2014 referred to in the Indenture. The Notes include (i) $175,000,000 aggregate principal amount of the Company's 11 1/4% Senior Notes, Series A, due 2014 issued under the Indenture on March 8, 2006 (herein called "Initial Notes"), (ii) if and when issued, additional 11 1/4% Senior Notes, Series A, due 2014 or 11 1/4% Senior Notes, Series B, due 2014 of the Company that may be issued from time to time under the Indenture subsequent to March 8, 2006 (herein called "Additional Notes") and (iii) if and when issued, the Company's 11 1/4% Senior Notes, Series B, due 2014 that may be issued from time to time under the Indenture in exchange for Initial Notes or Additional Notes in an offer registered under the Securities Act as provided in a Registration Rights Agreement. The Initial Notes, Additional Notes and Exchange Notes are treated as a single class of securities under the Indenture. The Indenture imposes, among other things, certain limitations on the Incurrence of Indebtedness by the Company and its Restricted Subsidiaries, the payment of dividends and other distributions on the Capital Stock of the Company and its Restricted Subsidiaries, the purchase or redemption of Capital Stock of the Company and Capital Stock of such Restricted Subsidiaries, certain purchases or redemptions of Subordinated Obligations, the sale or transfer of assets and Capital Stock of Restricted Subsidiaries, certain Sale/Leaseback Transactions involving the Company or any Restricted Subsidiary, the incurrence of certain Liens, transactions with Affiliates, mergers and consolidations, payments for consent, the business activities and investments of the Company and its Restricted Subsidiaries and the sale of Capital Stock of Restricted Subsidiaries. In addition, the Indenture limits the ability of the Company and its Restricted Subsidiaries to enter into agreements that restrict distributions and dividends from Restricted Subsidiaries and requires the Company to make available SEC information to the Holders as well as requiring certain Restricted Subsidiaries to guarantee the obligations under the Notes and the Indenture.

5. *Redemption*

Except as described below, the Notes are not redeemable until March 15, 2010. On and after March 15, 2010, the Company may redeem all or, from time to time, a part of the Notes upon not less than 30 nor more than 60 days' notice, at the following redemption prices (expressed as a percentage of principal amount) plus accrued and unpaid interest on the Notes, if any, to the applicable Redemption Date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the twelve-month period beginning on March 15 of the years indicated below:

Year	Percentage
2010	105.625%
2011	102.813%
2012 and thereafter	100.000%

Prior to March 15, 2009, the Company may on any one or more occasions redeem up to 35% of the original principal amount of the Notes, the Additional Notes, if any, and Exchange Notes with the Net Cash Proceeds of one or more Equity Offerings at a redemption price of 111.25% of the principal amount thereof, plus accrued and unpaid interest, if any, to the Redemption Date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided* that:

(1) at least 65% of the original principal amount of the Notes and Additional Notes, if any, and Exchange Notes remains outstanding after each such redemption; and

(2) the redemption occurs within 90 days after the closing of such Equity Offering.

If the optional Redemption Date is on or after a record date and on or before the related interest payment date, the accrued and unpaid interest, if any, shall be paid to the Person in whose name the

Note is registered at the close of business, on such record date, and no additional interest shall be payable to Holders whose Notes shall be subject to redemption by the Company.

In the case of any partial redemption, selection of the Notes for redemption shall be made by the Trustee in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not listed, then on a pro rata basis, by lot or by such other method as the Trustee shall deem to be fair and appropriate, although no Note of $1,000 in original principal amount or less may be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption relating to such Note shall state the portion of the principal amount thereof to be redeemed. A new Note in principal amount equal to the unredeemed portion thereof shall be issued in the name of the Holder thereof upon cancellation of the original Note.

The Company is not required to make mandatory redemption payments or sinking fund payments with respect to the Notes. The Company may at any time and from time to time purchase Notes through open market purchases, negotiated purchases, tender offers or otherwise.

6. *Change of Control Provisions*

Upon the occurrence of a Change of Control, any Holder shall have the right to require the Company to repurchase all or any part of the Notes of such Holder at a purchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to the date of repurchase (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date) as provided in, and subject to the terms of, the Indenture. The Company shall be required to make an Asset Disposition Offer in certain circumstances described in the Indenture.

7. *Denominations; Transfer; Exchange*

The Notes are in registered form without coupons in denominations of principal amount of $1,000 or integral multiples of $1,000. A Holder may transfer or exchange Notes in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Notes for a period beginning (1) 15 Business Days before the mailing of a notice of an offer to repurchase Notes and ending at the close of business on the day of such mailing, or (2) 15 days before an interest payment date and ending on such interest payment date.

8. *Persons Deemed Owners*

The registered Holder of this Note may be treated as the owner of it for all purposes.

9. *Unclaimed Money*

If money for the payment of the principal of or premium, if any, or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Company at its written request unless an abandoned property law designates another person. After any such payment, Holders entitled to the money must look only to the Company and not to the Trustee for payment.

10. *Defeasance*

Subject to certain conditions set forth in the Indenture, the Company at any time may terminate some or all of its obligations under the Notes and the Indenture if the Company deposits with the Trustee money or U.S. Government Obligations for the payment of principal and interest on the Notes to maturity.

11. *Amendment, Waiver*

Subject to certain exceptions set forth in the Indenture, (i) the Indenture, a Note Guarantee, and the Notes may be amended with the written consent of the Holders of at least a majority in principal amount of the then outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) and (ii) subject to certain exceptions, any past default (other than with respect to nonpayment) or noncompliance with any provision may be waived with the written consent of the Holders of a majority in principal amount of the then outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes). Subject to certain exceptions set forth in the Indenture, without the consent of any Holder, the Company, the Guarantors and the Trustee may amend the Indenture or the Notes to cure any ambiguity, omission, defect, mistake or inconsistency, to comply with *Article IV* or *Article X* in respect of the assumption by a Successor Company of an obligation of the Company or any Guarantor under the Indenture, to provide for uncertificated Notes in addition to or in place of certificated Notes, to add Guarantees with respect to the Notes or release a Guarantor upon its designation as an Unrestricted Subsidiary or otherwise in accordance with the Indenture, to secure the Notes, to make any change that would provide any additional rights or benefits to the Holders or that does not materially adversely affect the legal rights under the Indenture of any such Holder, to comply with any requirement of the SEC in order to effect or maintain the qualification of the Indenture under the TIA, to provide for the issuance of the Exchange Notes, to provide for successor trustees or to conform the text of the Indenture, this Note or the Note Guarantees to the "Description of notes" section of the Offering Memorandum.

12. *Defaults and Remedies*

Under the Indenture, Events of Default include (each of which are more specifically described in the Indenture) (i) default for 30 days in payment of interest or additional interest when due on the Notes; (ii) default in payment of principal or premium, if any, on the Notes at Stated Maturity, upon required repurchase or upon optional redemption pursuant to paragraph 5 hereof, upon declaration or otherwise; (iii) the failure by the Company or any Guarantor to comply with its obligations under Article IV of the Indenture; (iv) failure by the Company to comply for 30 days after written notice with any of their obligations under the covenants described under *Sections 3.8* and *3.10* of the Indenture (in each case, other than a (A) failure to purchase Notes when required under the Indenture, which failure shall constitute an Event of Default under clause (ii) above and (B) a failure by the Company or any Guarantor to comply with its obligations under Article IV, which failure shall constitute an Event of Default under clause (iii) above); (v) the failure by the Company or any restricted Subsidiary to comply for 60 days after written notice with their other agreements contained in the Indenture or under the Notes (other than those referred to in (i), (ii), (iii) or (iv) above); (vi) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries or is recourse to the Company or its Restricted Subsidiaries, by contract or operation of law), other than Indebtedness owed to the Company or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists, or is created after the date of the Indenture, which default (a) is caused by a failure to pay at the final Stated Maturity the stated principal amount or to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the grace period provided in such Indebtedness (*"payment default"*) or (b) results in the acceleration of such Indebtedness prior to its final maturity (the *"cross acceleration provision"*) and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a payment default or the maturity of which has been so accelerated, aggregates $15.0 million or more; (vii) certain events of bankruptcy, insolvency or reorganization of the Company or a Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated

financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law (the *"bankruptcy provisions"*); (viii) failure by the Company or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary to pay final judgments aggregating in excess of $15.0 million (net of any amounts that a reputable and creditworthy insurance company has acknowledged liability for in writing), which judgments are not paid, discharged, waived or stayed for a period of 60 days (the *"judgment default provision"*); or (ix) any Note Guarantee ceases to be in full force and effect (except as contemplated by the terms of the Indenture) or is declared null and void in a judicial proceeding or any Guarantor denies or disaffirms its obligations under the Indenture or its Note Guarantee. However, a default under clauses (iv) and (v) will not constitute an Event of Default until the Trustee or the Holders of at least 25% in principal amount of the outstanding Notes notify the Company of the default and the Company does not cure such default within the time specified in clauses (iv) and (v) hereof after receipt of such notice.

If an Event of Default (other than an Event of Default described in (vii) hereof) occurs and is continuing, the Trustee by notice to the Company or the Holders of at least 25% in principal amount of the outstanding Notes may declare all the Notes to be due and payable immediately. If an Event of Default described in (vii) hereof occurs and is continuing, the principal of, premium, if any, and accrued and unpaid interest on all the Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

Holders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Notes unless it receives indemnity or security satisfactory to it. Subject to certain limitations, Holders of a majority in principal amount of the Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders notice of any continuing Default or Event of Default (except a Default or Event of Default in payment of principal or interest) if it determines that withholding notice is in their interest.

13. *Trustee Dealings with the Company*

Subject to certain limitations set forth in the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

14. *No Recourse Against Others*

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Notes or the Indenture or the Note Guarantee or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Holder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Notes.

15. *Authentication*

This Note shall not be valid until an authorized signatory of the Trustee (or an authenticating agent acting on its behalf) manually signs the certificate of authentication on the other side of this Note.

16. *Abbreviations*

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entirety), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian) and U/G/M/A (=Uniform Gift to Minors Act).

17. *CUSIP Numbers*

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures the Company has caused CUSIP numbers to be printed on the Notes. No representation is made as to the accuracy of such numbers as printed on the Notes and reliance may be placed only on the other identification numbers placed thereon.

18. *Defined Terms*

As used in this Note, terms defined in the Indenture are used herein as therein defined.

19. *Governing Law*

This Note shall be governed by, and construed in accordance with, the laws of the State of New York.

The Company shall furnish to any Holder upon written request and without charge to the Holder a copy of the Indenture, which has in it the text of this Note in larger type. Requests may be made to:

Dave & Busters, Inc.
2481 Mañana Drive
Dallas, Texas 75220
Attention: Chief Financial Officer
Facsimile No.: 214-357-1536

ASSIGNMENT FORM

To assign this Note, fill in the form below:

I or we assign and transfer this Note to

_____

(Print or type assignee's name, address and zip code)

_____

(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint _____ agent to transfer this Note on the books of the Company. The agent may substitute another to act for him.

_____

Date: _____ Your Signature: _____

Signature Guarantee: _____

(Signature must be guaranteed)

_____

Sign exactly as your name appears on the other side of this Note.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

In connection with any transfer or exchange of any of the Notes evidenced by this certificate occurring prior to the date that is two years after the later of the date of original issuance of such Notes and the last date, if any, on which such Notes were owned by the Company or any Affiliate of the Company, the undersigned confirms that such Notes are being:

CHECK ONE BOX BELOW:

1 o acquired for the undersigned's own account, without transfer; or

2 o transferred to the Company; or

3 o transferred pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"); or

4 o transferred pursuant to an effective registration statement under the Securities Act; or

5 o transferred pursuant to and in compliance with Regulation S under the Securities Act; or

6 o transferred to an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act), that has furnished to the Trustee a signed letter containing certain representations and agreements (the form of which letter appears as *Section 2.8* of the Indenture); or

7 o transferred pursuant to another available exemption from the registration requirements of the Securities Act of 1933.

Unless one of the boxes is checked, the Trustee shall refuse to register any of the Notes evidenced by this certificate in the name of any person other than the registered Holder thereof; *provided, however*, that if box (5), (6) or (7) is checked, the Trustee or the Company may require, prior to registering any such transfer of the Notes, in their sole discretion, such legal opinions, certifications and other information as the Trustee or the Company may reasonably request to confirm that such transfer is

being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, such as the exemption provided by Rule 144 under such Act.

Signature

Signature Guarantee:

(Signature must be guaranteed)

Signature

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

TO BE COMPLETED BY PURCHASER IF (1) OR (3) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act, as amended, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: NOTICE: To be executed by an executive officer

[TO BE ATTACHED TO GLOBAL NOTES]

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL NOTE

The following increases or decreases in this Global Note have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Notes Custodian

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Company pursuant to *Section 3.8* or *3.10* of the Indenture, check the box: o

If you want to elect to have only part of this Note purchased by the Company pursuant to *Section 3.8* or *3.10* of the Indenture, state the amount in principal amount (must be denominations of $1,000 and integral multiples of $1,000): $

Date: _____ Your Signature: _____
(Sign exactly as your name appears on the other side of the Note)

Signature Guarantee: _____
(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

[FORM OF FACE OF SERIES B NOTE]

[Depositary Legend, if applicable]

No. [_____]

Principal Amount $[_____],
as revised by the Schedule of Increases
and Decreases in the Global Note attached hereto

CUSIP NO. _____

DAVE & BUSTERS, INC.

$11^{1}/_{4}$% Senior Note, Series B, due 2014

Dave & Busters, Inc., a Missouri corporation, promises to pay to Cede & Co., or registered assigns, the principal sum of [_____] Dollars, as revised by the Schedule of Increases and Decreases in the Global Note attached hereto, on March 15, 2014.

Interest Payment Dates: March 15 and September 15.
Record Dates: March 1 and September 1.
Additional provisions of this Note are set forth on the other side of this Note.

DAVE & BUSTERS, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF
AUTHENTICATION

Dated:

THE BANK OF NEW YORK TRUST COMPANY, N.A.

as Trustee, certifies that this is one of
the Notes referred to in the Indenture.

By: _____
Authorized Signatory

[FORM OF REVERSE SIDE OF SERIES B NOTE]

$11^{1}/_{4}$% Senior Note, Series B, due 2014

1. *Interest*

Dave & Busters, Inc., a Missouri corporation (such corporation, and its successors and assigns under the Indenture hereinafter referred to, being herein called the "Company"), promises to pay interest on the principal amount of this Note at the rate per annum shown above.

The Company shall pay interest semiannually on March 15 and September 15 of each year. Interest on the Notes shall accrue from the most recent date to which interest has been paid on the Notes or, if no interest has been paid, from March 8, 2006. The Company shall pay interest on overdue principal or premium, if any (plus interest on such interest to the extent lawful), at the rate borne by the Notes to the extent lawful. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

2. *Method of Payment*

By no later than 10:00 a.m. (New York City time) on the date on which any principal of (premium, if any) or interest on any Note is due and payable, the Company shall irrevocably deposit with the Trustee or the Paying Agent money sufficient to pay such principal, premium, if any, and/or interest. The Company shall pay interest (except Defaulted Interest) to the Persons who are registered Holders at the close of business on the March 1 and September 1 next preceding the interest payment date even if Notes are cancelled or repurchased after the record date and on or before the interest payment date. Holders must surrender Notes to a Paying Agent to collect principal payments. The Company shall pay principal, premium, if any, and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of Notes represented by a Global Note (including principal, premium, if any, and interest) shall be made by the transfer of immediately available funds to the accounts specified by the Depositary. The Company shall make all payments in respect of a Definitive Note (including principal, premium, if any, and interest) by mailing a check to the registered address of each Holder thereof as such address shall appear on the Note Register; *provided*, *however*, that payments on the Notes represented by Definitive Notes may also be made, in the case of a Holder of at least $1,000,000 aggregate principal amount of Notes represented by Definitive Notes, by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 15 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept).

3. *Paying Agent and Registrar*

Initially, The Bank of New York Trust Company, N.A., the trustee under the Indenture ("Trustee"), shall act as Paying Agent and Registrar. The Company may appoint and change any Paying Agent or Registrar without notice to any Holder. The Company or any Wholly Owned Subsidiary that is a Domestic Subsidiary may act as Paying Agent or Registrar.

4. *Indenture*

The Company issued the Notes under an Indenture dated as of March 8, 2006 (as it may be amended or supplemented from time to time in accordance with the terms thereof, the "Indenture"), among the Company, the Guarantors and the Trustee. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 *U.S.C.* §§77aaa-77bbbb) as in effect from time to time (the "Act"). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture and the Act for a statement of those terms.

The Notes are general unsecured senior obligations of the Company. The aggregate principal amount of Notes which may be authenticated and delivered under the Indenture is unlimited. This Note is one of the 11 1/4% Senior Notes, Series A, due 2014 referred to in the Indenture. The Notes include (i) $175,000,000 aggregate principal amount of the Company's 11 1/4% Senior Notes, Series A, due 2014 issued under the Indenture on March 8, 2006 (herein called "Initial Notes"), (ii) if and when issued, additional 11 1/4% Senior Notes, Series A, due 2014 or 11 1/4% Senior Notes, Series B, due 2014 of the Company that may be issued from time to time under the Indenture subsequent to March 8, 2006 (herein called "Additional Notes") and (iii) if and when issued, the Company's 11 1/4% Senior Notes, Series B, due 2014 that may be issued from time to time under the Indenture in exchange for Initial Notes or Additional Notes in an offer registered under the Securities Act as provided in a Registration Rights Agreement. The Initial Notes, Additional Notes and Exchange Notes are treated as a single class of securities under the Indenture. The Indenture imposes, among other things, certain limitations on the Incurrence of Indebtedness by the Company and its Restricted Subsidiaries, the payment of dividends and other distributions on the Capital Stock of the Company and its Restricted Subsidiaries, the purchase or redemption of Capital Stock of the Company and Capital Stock of such Restricted Subsidiaries, certain purchases or redemptions of Subordinated Obligations, the sale or transfer of assets and Capital Stock of Restricted Subsidiaries, certain Sale/Leaseback Transactions involving the Company or any Restricted Subsidiary, the incurrence of certain Liens, transactions with Affiliates, mergers and consolidations, payments for consent, the business activities and investments of the Company and its Restricted Subsidiaries and the sale of Capital Stock of Restricted Subsidiaries. In addition, the Indenture limits the ability of the Company and its Restricted Subsidiaries to enter into agreements that restrict distributions and dividends from Restricted Subsidiaries and requires the Company to make available SEC information to the Holders as well as requiring certain Restricted Subsidiaries to guarantee the obligations under the Notes and the Indenture.

5. *Redemption*

Except as described below, the Notes are not redeemable until March 15, 2010. On and after March 15, 2010, the Company may redeem all or, from time to time, a part of the Notes upon not less than 30 nor more than 60 days' notice, at the following redemption prices (expressed as a percentage of principal amount) plus accrued and unpaid interest on the Notes, if any, to the applicable Redemption Date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the twelve-month period beginning on March 15 of the years indicated below:

Year	Percentage
2010	105.625%
2011	102.813%
2012 and thereafter	100.000%

Prior to March 15, 2009, the Company may on any one or more occasions redeem up to 35% of the original principal amount of the Notes and Additional Notes, if any, and Exchange Notes with the Net Cash Proceeds of one or more Equity Offerings at a redemption price of 111.25% of the principal amount thereof, plus accrued and unpaid interest, if any, to the Redemption Date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided* that:

(1) at least 65% of the original principal amount of the Notes and Additional Notes, if any, and Exchange Notes remains outstanding after each such redemption; and

(2) the redemption occurs within 90 days after the closing of such Equity Offering.

If the optional Redemption Date is on or after a record date and on or before the related interest payment date, the accrued and unpaid interest, if any, shall be paid to the Person in whose name the

Note is registered at the close of business, on such record date, and no additional interest shall be payable to Holders whose Notes shall be subject to redemption by the Company.

In the case of any partial redemption, selection of the Notes for redemption shall be made by the Trustee in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not listed, then on a pro rata basis, by lot or by such other method as the Trustee shall deem to be fair and appropriate, although no Note of $1,000 in original principal amount or less shall be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption relating to such Note shall state the portion of the principal amount thereof to be redeemed. A new Note in principal amount equal to the unredeemed portion thereof shall be issued in the name of the Holder thereof upon cancellation of the original Note.

The Company is not required to make mandatory redemption payments or sinking fund payments with respect to the Notes. The Company may at any time and from time to time purchase Notes through open market purchases, negotiated purchases, tender offers or otherwise.

6. *Change of Control Provisions*

Upon the occurrence of a Change of Control, any Holder shall have the right to require the Company to repurchase all or any part of the Notes of such Holder at a purchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to the date of repurchase (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date) as provided in, and subject to the terms of, the Indenture. The Company shall be required to make an Asset Disposition Offer in certain circumstances described in the Indenture.

7. *Denominations; Transfer; Exchange*

The Notes are in registered form without coupons in denominations of principal amount of $1,000 and integral multiples of $1,000. A Holder may transfer or exchange Notes in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Notes for a period beginning (1) 15 Business Days before the mailing of a notice of an offer to repurchase Notes and ending at the close of business on the day of such mailing, or (2) 15 days before an interest payment date and ending on such interest payment date.

8. *Persons Deemed Owners*

The registered Holder of this Note may be treated as the owner of it for all purposes.

9. *Unclaimed Money*

If money for the payment of the principal of or premium, if any, or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Company at its written request unless an abandoned property law designates another person. After any such payment, Holders entitled to the money must look only to the Company and not to the Trustee for payment.

10. *Defeasance*

Subject to certain conditions set forth in the Indenture, the Company at any time may terminate some or all of its obligations under the Notes and the Indenture if the Company deposits with the Trustee money or U.S. Government Obligations for the payment of principal and interest on the Notes to maturity.

11. *Amendment, Waiver*

Subject to certain exceptions set forth in the Indenture, (i) the Indenture, a Note Guarantee, and the Notes may be amended with the written consent of the Holders of at least a majority in principal amount of the then outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) and (ii) subject to certain exceptions, any past default (other than with respect to nonpayment) or noncompliance with any provision may be waived with the written consent of the Holders of a majority in principal amount of the then outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes). Subject to certain exceptions set forth in the Indenture, without the consent of any Holder, the Company, the Guarantors and the Trustee may amend the Indenture or the Notes to cure any ambiguity, omission, defect, mistake or inconsistency, to comply with *Article IV* or *Article X* in respect of the assumption by a Successor Company of an obligation of the Company or any Guarantor under the Indenture, to provide for uncertificated Notes in addition to or in place of certificated Notes, to add Guarantees with respect to the Notes or release a Guarantor upon its designation as an Unrestricted Subsidiary or otherwise in accordance with the Indenture, to secure the Notes, to make any change that would provide any additional rights or benefits to the Holders or that does not materially adversely affect the legal rights under the Indenture of any such Holder, to comply with any requirement of the SEC in order to effect or maintain the qualification of the Indenture under the TIA, to provide for the issuance of the Exchange Notes, to provide for successor trustees or to conform the text of the Indenture, this Note or the Note Guarantees to the "Description of notes" section of the Offering Memorandum.

12. *Defaults and Remedies*

Under the Indenture, Events of Default include (each of which are more specifically described in the Indenture) (i) default for 30 days in payment of interest or additional interest when due on the Notes; (ii) default in payment of principal or premium, if any, on the Notes at Stated Maturity, upon required repurchase or upon optional redemption pursuant to paragraph 5 hereof, upon declaration or otherwise; (iii) the failure by the Company or any Guarantor to comply with its obligations under Article IV of the Indenture; (iv) failure by the Company to comply for 30 days after written notice with any of their obligations under the covenants described under *Sections 3.8* and *3.10* of the Indenture (in each case, other than a (A) failure to purchase Notes when required under the Indenture, which failure shall constitute an Event of Default under clause (ii) above and (B) a failure by the Company or any Guarantor to comply with its obligations under Article IV, which failure shall constitute an Event of Default under clause (iii) above); (v) the failure by the Company or any Restricted Subsidiary to comply for 60 days after written notice with their other agreements contained in the Indenture or under the Notes (other than those referred to in (i), (ii), (iii) or (iv) above); (vi) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries or is recourse to the Company or its Restricted Subsidiaries, by contract or operation of law), other than Indebtedness owed to the Company or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists, or is created after the date of the Indenture, which default (a) is caused by a failure to pay at the final Stated Maturity the stated principal amount or to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the grace period provided in such Indebtedness (*"payment default"*) or (b) results in the acceleration of such Indebtedness prior to its final maturity (the *"cross acceleration provision"*) and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a payment default or the maturity of which has been so accelerated, aggregates $15.0 million or more; (vii) certain events of bankruptcy, insolvency or reorganization of the Company or a Significant Subsidiary or group of Restricted Subsidiaries that,

taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law (the *"bankruptcy provisions"*); (viii) failure by the Company or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary to pay final judgments aggregating in excess of $15.0 million (net of any amounts that a reputable and creditworthy insurance company has acknowledged liability for in writing), which judgments are not paid, discharged, waived or stayed for a period of 60 days (the *"judgment default provision"*); or (ix) any Note Guarantee ceases to be in full force and effect (except as contemplated by the terms of the Indenture) or is declared null and void in a judicial proceeding or any Guarantor denies or disaffirms its obligations under the Indenture or its Note Guarantee. However, a default under clauses (iv) and (v) will not constitute an Event of Default until the Trustee or the Holders of at least 25% in principal amount of the outstanding Notes notify the Company of the default and the Company does not cure such default within the time specified in clauses (iv) and (v) hereof after receipt of such notice.

If an Event of Default (other than an Event of Default described in (vii) hereof) occurs and is continuing, the Trustee by notice to the Company or the Holders of at least 25% in principal amount of the outstanding Notes may declare all the Notes to be due and payable immediately. If an Event of Default described in (vii) hereof occurs and is continuing, the principal of, premium, if any, and accrued and unpaid interest on all the Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

Holders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Notes unless it receives indemnity or security satisfactory to it. Subject to certain limitations, Holders of a majority in principal amount of the Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders notice of any continuing Default or Event of Default (except a Default or Event of Default in payment of principal or interest) if it determines that withholding notice is in their interest.

13. *Trustee Dealings with the Company*

Subject to certain limitations set forth in the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

14. *No Recourse Against Others*

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Notes or the Indenture or the Note Guarantee or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Holder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Notes.

15. *Authentication*

This Note shall not be valid until an authorized signatory of the Trustee (or an authenticating agent acting on its behalf) manually signs the certificate of authentication on the other side of this Note.

16. *Abbreviations*

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entirety), JT TEN (=joint tenants with rights of

survivorship and not as tenants in common), CUST (=custodian) and U/G/M/A (=Uniform Gift to Minors Act).

17. *CUSIP Numbers*

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures the Company has caused CUSIP numbers to be printed on the Notes. No representation is made as to the accuracy of such numbers as printed on the Notes and reliance may be placed only on the other identification numbers placed thereon.

18. *Defined Terms*

As used in this Note, terms defined in the Indenture are used herein as therein defined.

19. *Governing Law*

This Note shall be governed by, and construed in accordance with, the laws of the State of New York.

The Company shall furnish to any Holder upon written request and without charge to the Holder a copy of the Indenture, which has in it the text of this Note in larger type. Requests may be made to:

Dave & Busters, Inc.
2481 Mañana Drive
Dallas, Texas 75220
Attention: Chief Financial Officer
Facsimile No.: 214-357-1536

ASSIGNMENT FORM

To assign this Note, fill in the form below:

I or we assign and transfer this Note to

_____
(Print or type assignee's name, address and zip code)

_____
(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint _____ agent to transfer this Note on the books of the Company. The agent may substitute another to act for him.

_____

Date: _____ Your Signature: _____

Signature Guarantee: _____
(Signature must be guaranteed)

_____
Sign exactly as your name appears on the other side of this Note.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

[TO BE ATTACHED TO GLOBAL NOTES]

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL NOTE

The following increases or decreases in this Global Note have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Notes Custodian

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Company pursuant to *Section 3.8* or *3.10* of the Indenture, check the box: o

If you want to elect to have only part of this Note purchased by the Company pursuant to *Section 3.8* or *3.10* of the Indenture, state the amount in principal amount (must be denominations of $1,000 and integral multiples of $1,000): $

Date: _____ Your Signature: _____
(Sign exactly as your name appears on the other side of the Note)

Signature Guarantee: _____
(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

FORM OF NOTATION OF GUARANTEE

For value received, each Guarantor (which term includes any successor Person under the Indenture) has, jointly and severally, unconditionally guaranteed, to the extent set forth in the Indenture and subject to the provisions in the Indenture dated as of March 8, 2006 (the "*Indenture*") among Dave & Busters, Inc., the Guarantors listed on the signature pages thereto and The Bank of New York Trust Company, N.A., as trustee (the "*Trustee*"), (a) the full and punctual payment when due, whether at maturity, by acceleration, by redemption or otherwise, of the principal of, premium, if any, and interest on the Notes and all other obligations and liabilities of the Company to the Holders or the Trustee under the Indenture (including without limitation interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceedings, relating to the Company or any Guarantor whether or not a claim for post-filing or post-petition interest is allowed in such proceeding). The obligations of the Guarantors to the Holders and to the Trustee pursuant to the Note Guarantee and the Indenture are expressly set forth in Article X of the Indenture and reference is hereby made to the Indenture for the precise terms of the Guarantee, which terms are incorporated herein by reference.

[Guarantor]

By: _____

Name:
Title:

FORM OF INDENTURE SUPPLEMENT TO ADD GUARANTORS TO GUARANTEE NOTES

This Supplemental Indenture and Note Guarantee, dated as of [ ], 20 (this "*Supplemental Indenture*" or "*Guarantee*"), among [*name of future Guarantor*] (the "*Guarantor*"), Dave & Busters, Inc. (together with its successors and assigns, the "*Company*"), each other then existing Guarantor under the Indenture referred to below, and The Bank of New York Trust Company, N.A., as Trustee under the Indenture referred to below.

W I T N E S S E T H:

WHEREAS, the Company, the Guarantors and the Trustee have heretofore executed and delivered an Indenture, dated as of March 8, 2006 (as amended, supplemented, waived or otherwise modified, the "*Indenture*"), providing for the issuance of an unlimited aggregate principal amount of 11% Senior Notes due 2014 of the Company (the "*Notes*");

WHEREAS, *Section 3.11* of the Indenture provides that the Company is required to cause each Restricted Subsidiary, other than a Foreign Subsidiary created or acquired by the Company or one or more of its Restricted Subsidiaries to execute and deliver to the Trustee a Note Guarantee pursuant to which such Guarantor shall unconditionally Guarantee, on a joint and several basis, the full and prompt payment of the principal of, premium, if any and interest on the Notes and all sums due and owing to the Trustee on a senior basis; and

WHEREAS, pursuant to *Section 9.1* of the Indenture, the Trustee and the Company are authorized to execute and deliver this Supplemental Indenture to amend the Indenture, without the consent of any Holder;

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

ARTICLE I

Definitions

SECTION 1.1 *Defined Terms*. As used in this Supplemental Indenture, terms defined in the Indenture or in the preamble or recital hereto are used herein as therein defined, except that the term *"Holders"* in this Guarantee shall refer to the term "Holders" as defined in the Indenture and the Trustee acting on behalf or for the benefit of such Holders. The words "herein," "hereof" and "hereby" and other words of similar import used in this Supplemental Indenture refer to this Supplemental Indenture as a whole and not to any particular section hereof.

ARTICLE II

Agreement to be Bound; Guarantee

SECTION 2.1 *Agreement to be Bound*. The Guarantor hereby becomes a party to the Indenture as a Guarantor and as such shall have all of the rights and be subject to all of the obligations and agreements of a Guarantor under the Indenture. The Guarantor agrees to be bound by all of the provisions of the Indenture applicable to a Guarantor and to perform all of the obligations and agreements of a Guarantor under the Indenture.

SECTION 2.2 *Guarantee*. The Guarantor hereby fully, unconditionally and irrevocably guarantees, as primary obligor and not merely as a surety, jointly and severally with each other Guarantor, to each Holder and the Trustee, the full and punctual payment when due, whether at maturity, by acceleration, by redemption or otherwise, of the Obligations pursuant to Article X of the Indenture.

ARTICLE III

Miscellaneous

SECTION 3.1 *Notices*. All notices and other communications to the Guarantor shall be given as provided in the Indenture to the Guarantor, at its address set forth below, with a copy to the Company as provided in the Indenture for notices to the Company.

[*Name of future Guarantor*]
[ ]
[ ]
[Attention: [ ]
[Facsimile No.: ( ) -]

SECTION 3.2 *Parties*. Nothing expressed or mentioned herein is intended or shall be construed to give any Person, firm or corporation, other than the Holders and the Trustee, any legal or equitable right, remedy or claim under or in respect of this Supplemental Indenture or the Indenture or any provision herein or therein contained.

SECTION 3.3 *Governing Law*. This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the State of New York.

SECTION 3.4 *Severability Clause*. In case any provision in this Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

SECTION 3.5 *Ratification of Indenture; Supplemental Indentures Part of Indenture*. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder heretofore or hereafter authenticated and delivered shall be bound hereby. The Trustee makes no representation or warranty as to the validity or sufficiency of this Supplemental Indenture.

SECTION 3.6 *Counterparts*. The parties hereto may sign one or more copies of this Supplemental Indenture in counterparts, all of which together shall constitute one and the same agreement.

SECTION 3.7 *Headings*. The headings of the Articles and the sections in this Guarantee are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

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

[GUARANTOR],
as a Guarantor

By: _____

Name:
Title:

THE BANK OF NEW YORK TRUST COMPANY, N.A., as Trustee

By: _____

Name:
Title:

DAVE & BUSTERS, INC.

By: _____

Name:
Title:

Exhibit 4.2

REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT dated March 8, 2006 (the "*Agreement*") is entered into by and among Dave & Buster's Inc., a Missouri corporation (the "*Company*"), the guarantors listed in Schedule 1 hereto (the "*Guarantors*"), and J.P. Morgan Securities Inc. ("*JPMorgan*"), as the initial purchaser (the "*Initial Purchaser*").

The Company, the Guarantors and the Initial Purchaser are parties to the Purchase Agreement dated March 3, 2006 (the "*Purchase Agreement*"), which provides for the sale by the Company to the Initial Purchaser of $175,000,000 aggregate principal amount of the Company's $11^{1}/_{4}$% Senior Notes due 2014 (the "*Securities*") which will be guaranteed on an unsecured basis by each of the Guarantors. As an inducement to the Initial Purchaser to enter into the Purchase Agreement, the Company and the Guarantors have agreed to provide to the Initial Purchaser and its direct and indirect transferees the registration rights set forth in this Agreement. The execution and delivery of this Agreement is a condition to the closing under the Purchase Agreement.

In consideration of the foregoing, the parties hereto agree as follows:

1. *Definitions*. As used in this Agreement, the following terms shall have the following meanings:

"*Additional Guarantor*" shall mean any subsidiary of the Company that executes a Subsidiary Guarantee under the Indenture after the date of this Agreement.

"*Base Interest*" shall mean the interest that would otherwise accrue on the securities under the terms thereof and the Indenture, without giving effect to the provisions of this Registration Rights Agreement.

"*Business Day*" shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

"*Company*" shall have the meaning set forth in the preamble and shall also include the Company's successors.

"*Exchange Act*" shall mean the Securities Exchange Act of 1934, as amended from time to time.

"*Exchange Dates*" shall have the meaning set forth in Section 2(a)(ii) hereof.

"*Exchange Offer*" shall mean the exchange offer by the Company and the Guarantors of Exchange Securities for Registrable Securities pursuant to Section 2(a) hereof.

"*Exchange Offer Registration*" shall mean a registration under the Securities Act effected pursuant to Section 2(a) hereof.

"*Exchange Offer Registration Statement*" shall mean an exchange offer registration statement on Form S-4 (or, if applicable, on another appropriate form) and all amendments and supplements to such registration statement, in each case including the Prospectus contained therein or deemed a part thereof, all exhibits thereto and any document incorporated by reference therein.

"*Exchange Securities*" shall mean senior notes issued by the Company and guaranteed by the Guarantors under the Indenture containing terms identical to the Securities (except that the Exchange Securities will not be subject to restrictions on transfer or to any increase in annual interest rate for failure to comply with this Agreement) and to be offered to Holders of Securities in exchange for Securities pursuant to the Exchange Offer.

"*Free Writing Prospectus*" means each free writing prospectus (as defined in Rule 405 under the Securities Act) prepared by or on behalf of the Company or used or referred to by the Company in connection with the sale of the Securities.

"*Guarantors*" shall have the meaning set forth in the preamble and shall also include any Guarantor's successors and any Additional Guarantors.

"*Holders*" shall mean the Initial Purchaser, for so long as its owns any Registrable Securities, and each of its successors, assigns and direct and indirect transferees who become owners of Registrable Securities under the Indenture; provided that for purposes of Sections 4 and 5 of this Agreement, the term "Holders" shall include Participating Broker-Dealers.

"*Indemnified Person*" shall have the meaning set forth in Section 5(c) hereof.

"*Indemnifying Person*" shall have the meaning set forth in Section 5(c) hereof.

"*Indenture*" shall mean the Indenture relating to the Securities dated as of March 8, 2006 among the Company, the Guarantors and The Bank of New York Trust Company, N.A., as trustee, and as the same may be amended from time to time in accordance with the terms thereof.

"*Initial Purchaser*" shall have the meaning set forth in the preamble.

"*Inspector*" shall have the meaning set forth in Section 3(a)(xiii) hereof.

"*Issuer Information*" shall have the meaning set forth in Section 5(a) hereof.

"*JPMorgan*" shall have the meaning set forth in the preamble.

"*Majority Holders*" shall mean the Holders of a majority of the aggregate principal amount of the outstanding Registrable Securities; provided that whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, any Registrable Securities owned directly or indirectly by the Company or any of its affiliates shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage or amount; and provided, further, that if the Company shall issue any additional Securities under the Indenture prior to consummation of the Exchange Offer or, if applicable, the effectiveness of any Shelf Registration Statement, such additional Securities and the Registrable Securities to which this Agreement relates shall be treated together as one class for purposes of determining whether the consent or approval of Holders of a specified percentage of Registrable Securities has been obtained.

"*Participating Broker-Dealers*" shall have the meaning set forth in Section 4(a) hereof.

"*Person*" shall mean an individual, partnership, limited liability company, corporation, trust or unincorporated organization, or a government or agency or political subdivision thereof.

"*Prospectus*" shall mean the prospectus included in a Registration Statement, including any preliminary prospectus, and any such prospectus as amended or supplemented by any prospectus supplement, including a prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by a Shelf Registration Statement, and by all other amendments and supplements to such prospectus, and in each case including any document incorporated by reference therein.

"*Purchase Agreement*" shall have the meaning set forth in the preamble.

"*Registrable Securities*" shall mean the Securities; provided that the Securities shall cease to be Registrable Securities (i) when a Registration Statement with respect to such Securities has become effective under the Securities Act and such Securities have been exchanged or disposed of pursuant to such Registration Statement, (ii) when such Securities are eligible to be sold pursuant to Rule 144(k) (or any similar provision then in force, but not Rule 144A) under the Securities Act, (iii) such Security is sold pursuant to Rule 144 under circumstances in which any legend borne by such Security relating to restrictions on transferability thereof, under the Securities Act or otherwise, is removed by the Company or (iv) when such Securities cease to be outstanding.

"*Registration Expenses*" shall mean any and all expenses incident to performance of or compliance by the Company and the Guarantors with this Agreement, including without limitation: (i) all SEC, stock exchange or National Association of Securities Dealers, Inc. registration and filing fees, (ii) all fees and expenses incurred in connection with compliance with state securities or blue sky laws (including reasonable fees and disbursements of not more than one counsel for any Underwriters or Holders (whose counsel shall be selected by the Holders of a majority in aggregate principal amount of Registrable Securities to be registered in the applicable Registration Statement) in connection with blue sky qualification of any Exchange Securities or Registrable Securities), (iii) all expenses of any Persons in preparing or assisting in preparing, word processing, printing and distributing any Registration Statement, any Prospectus and any amendments or supplements thereto, any underwriting agreements, securities sales agreements or other similar agreements and any other documents relating to the performance of and compliance with this Agreement, (iv) all rating agency fees, (v) all fees and disbursements relating to the qualification of the Indenture under applicable securities laws, (vi) the fees and disbursements of the Trustee and its counsel, (vii) the fees and disbursements of counsel for the Company and the Guarantors and, in the case of a Shelf Registration Statement, the fees and disbursements of one counsel for the Holders (which counsel shall be selected by the Majority Holders and which counsel may also be counsel for the Initial Purchaser) and (viii) the fees and disbursements of the independent public accountants of the Company and the Guarantors, including the expenses of any special audits or "comfort" letters required by or incident to the performance of and compliance with this Agreement, but excluding any and all fees and expenses of advisors or counsel to the Underwriters (other than fees and expenses set forth in clause (ii) above) or the Holders and underwriting discounts and commissions, brokerage commissions and transfer taxes, if any, relating to the sale or disposition of Registrable Securities by a Holder pursuant to any Registration Statement.

"*Registration Statement*" shall mean any registration statement of the Company and the Guarantors that covers any of the Exchange Securities or Registrable Securities pursuant to the provisions of this Agreement and all amendments and supplements to any such registration statement, including post-effective amendments, in each case including the Prospectus contained therein or deemed a part thereof, all exhibits thereto and any document incorporated by reference therein.

"*SEC*" shall mean the United States Securities and Exchange Commission.

"*Securities*" shall have the meaning set forth in the preamble.

"*Securities Act*" shall mean the Securities Act of 1933, as amended from time to time.

"*Shelf Additional Interest Date*" shall have the meaning set forth in Section 2(d) hereof.

"*Shelf Effectiveness Period*" shall have the meaning set forth in Section 2(b) hereof.

"*Shelf Registration*" shall mean a registration effected pursuant to Section 2(b) hereof.

"*Shelf Registration Statement*" shall mean a "shelf" registration statement of the Company and the Guarantors that covers all or a portion of the Registrable Securities (but no other securities unless approved by a majority of the Holders whose Registrable Securities are to be covered by such Shelf Registration Statement) on an appropriate form under Rule 415 under the Securities Act, or any similar rule that may be adopted by the SEC, and all amendments and supplements to such registration statement, including post-effective amendments, in each case including the Prospectus contained therein or deemed a part thereof, all exhibits thereto and any document incorporated by reference therein.

"*Shelf Request*" shall have the meaning set forth in Section 2(b) hereof.

"*Subsidiary Guarantee*" shall mean the guarantees of the Securities and Exchange Securities by the Guarantors under the Indenture.

"*Staff*" shall mean the staff of the SEC.

"*Target Registration Date*" shall have the meaning set forth in Section 2(d) hereof.

"*Trust Indenture Act*" shall mean the Trust Indenture Act of 1939, as amended from time to time.

"*Trustee*" shall mean the trustee with respect to the Securities under the Indenture.

"*Underwriter*" shall have the meaning set forth in Section 3(e) hereof.

"*Underwritten Offering*" shall mean an offering in which Registrable Securities are sold to one or more Underwriters for reoffering to the public.

2. *Registration Under the Securities Act*. (a) To the extent not prohibited by any applicable law or applicable interpretations of the Staff, the Company and the Guarantors shall use their reasonable best efforts to (i) cause to be filed with the SEC an Exchange Offer Registration Statement covering an offer to the Holders to exchange all the Registrable Securities for Exchange Securities, (ii) cause such Registration Statement to become effective not later than 180 days after the date hereof and (iii) to the extent necessary to ensure that the Prospectus contained in any Exchange Offer Registration Statement is available for sales of Registrable Securities by any Participating Broker-Dealers, have such Registration Statement remain effective until 180 days after the last Exchange Date for use by one or more Participating Broker-Dealers or such shorter period as will terminate when all Registrable Securities covered by such Registration Statement have been sold pursuant thereto. The Company and the Guarantors shall commence the Exchange Offer promptly after the Exchange Offer Registration Statement is declared effective by the SEC and use their reasonable best efforts to complete the Exchange Offer not later than 30 days after such effective date.

The Company and the Guarantors shall commence the Exchange Offer by causing the mailing of the related Prospectus, appropriate letters of transmittal and other accompanying documents to each Holder stating, in addition to such other disclosures as are required by applicable law, substantially the following:

(i) that the Exchange Offer is being made pursuant to this Agreement and that all Registrable Securities validly tendered and not properly withdrawn will be accepted for exchange;

(ii) the dates of acceptance for exchange (which shall be a period of at least 20 Business Days from the date such notice is mailed) (the "*Exchange Dates*");

(iii) that any Registrable Security not tendered will remain outstanding and continue to accrue interest but will not retain any rights under this Agreement, except as otherwise specified herein;

(iv) that any Holder electing to have a Registrable Security exchanged pursuant to the Exchange Offer will be required to (A) surrender such Registrable Security, together with the appropriate letters of transmittal, to the institution and at the address (located in the Borough of Manhattan, The City of New York) and in the manner specified in the notice, or (B) effect such exchange otherwise in compliance with the applicable procedures of the depositary for such Registrable Security, in each case prior to the close of business on the last Exchange Date; and

(v) that any Holder will be entitled to withdraw its election, not later than the close of business on the last Exchange Date, by (A) sending to the institution and at the address (located in the Borough of Manhattan, The City of New York) specified in the notice, a telegram, telex, facsimile transmission or letter setting forth the name of such Holder, the principal amount of Registrable Securities delivered for exchange and a statement that such Holder is withdrawing its election to have such Securities exchanged or (B) effecting such withdrawal in compliance with the applicable procedures of the depositary for the Registrable Securities.

As a condition to participating in the Exchange Offer, each Holder will be required to represent in writing to the Company and the Guarantors prior to the consummation of the Exchange Offer (which representation may be contained in the letter of transmittal contemplated by the Exchange Offer

Registration Statement) that (i) any Exchange Securities to be received by it will be acquired in the ordinary course of its business, (ii) at the time of the commencement of the Exchange Offer it is not engaged in, and does not intend to engage in, and has no arrangement or understanding with any Person to participate in, the distribution (within the meaning of the Securities Act) of the Exchange Securities in violation of the provisions of the Securities Act, (iii) it is not an "affiliate" (within the meaning of Rule 405 under the Securities Act) of the Company or any Guarantor and (iv) if such Holder is a broker-dealer that will receive Exchange Securities for its own account in exchange for Registrable Securities that were acquired as a result of market-making or other trading activities, then such Holder will comply with the applicable provisions of the Securities Act (including, but not limited to, the prospectus delivery requirements thereunder) in connection with any resale of such Exchange Securities.

As soon as practicable after the last Exchange Date, the Company and the Guarantors shall use their reasonable best efforts to:

(i) accept for exchange Registrable Securities or portions thereof validly tendered and not properly withdrawn pursuant to the Exchange Offer; and

(ii) deliver, or cause to be delivered, to the Trustee for cancellation all Registrable Securities or portions thereof so accepted for exchange by the Company and issue, and cause the Trustee to promptly authenticate and deliver to each Holder, Exchange Securities in principal amount equal to the principal amount of the Registrable Securities validly tendered by such Holder and accepted for exchange pursuant to the Exchange Offer.

The Company and the Guarantors shall use their reasonable best efforts to complete the Exchange Offer as provided above and shall comply with the applicable requirements of the Securities Act, the Exchange Act and other applicable laws and regulations in connection with the Exchange Offer. The Exchange Offer shall not be subject to any conditions, other than that the Exchange Offer does not violate any applicable law or applicable interpretations of the Staff.

(b) In the event that (i) the Company and the Guarantors determine that the Exchange Offer Registration provided for in Section 2(a) above is not available or may not be completed as soon as practicable after the last Exchange Date, in each case because it would violate any applicable law or applicable interpretations of the Staff, (ii) the Exchange Offer is not for any other reason completed by October 4, 2006 or (iii) upon receipt of a written request (a "*Shelf Request*") from the Initial Purchaser representing that it holds Registrable Securities that are or were ineligible to be exchanged in the Exchange Offer, the Company and the Guarantors shall, in lieu of (or, in the case of clause (ii) or (iii), in addition to) conducting the Exchange Offer as contemplated by Section 2(a), use their reasonable best efforts to cause to be filed as soon as practicable after such determination, date or Shelf Request, as the case may be, a Shelf Registration Statement providing for the sale of all the Registrable Securities by the Holders thereof and to have such Shelf Registration Statement become effective. As soon as practicable after the obligation to file a Shelf Registration Statement arise pursuant to this Section 2(b), the Company shall give notice (a "Shelf Notice") of such fact to the Holders and to the Initial Purchaser, if applicable.

In the event that the Company and the Guarantors are required to file a Shelf Registration Statement pursuant to clauses (ii) or (iii) of the preceding sentence, the Company and the Guarantors shall use their reasonable best efforts to file and have become effective both an Exchange Offer Registration Statement pursuant to Section 2(a) with respect to all Registrable Securities and a Shelf Registration Statement (which may be a combined Registration Statement with the Exchange Offer Registration Statement) with respect to offers and sales of Registrable Securities held by the Initial Purchaser after completion of the Exchange Offer.

The Company and the Guarantors agree to use their reasonable best efforts to keep the Shelf Registration Statement continuously effective until the expiration of the time period referred to in Rule 144(k) (or any similar rule then in force, but not Rule 144A) under the Securities Act with respect to the Registrable Securities or such shorter period that will terminate when all the Registrable Securities covered by the Shelf Registration Statement have been sold pursuant to the Shelf Registration Statement (the "*Shelf Effectiveness Period*"). The Company and the Guarantors further agree to supplement or amend the Shelf Registration Statement and the related Prospectus if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement or by the Securities Act or by any other rules and regulations thereunder or if reasonably requested by a Holder of Registrable Securities with respect to information relating to such Holder, and to use their reasonable best efforts to cause any such amendment to become effective, if required, and such Shelf Registration Statement and Prospectus to become usable as soon as thereafter practicable. The Company and the Guarantors agree to furnish to the Holders of Registrable Securities copies of any such supplement or amendment as promptly as practicable after its being used or filed with the SEC.

(c) The Company and the Guarantors shall pay all Registration Expenses in connection with any registration pursuant to Section 2(a) or Section 2(b) hereof. Each Holder shall pay all underwriting discounts and commissions, brokerage commissions and transfer taxes, if any, relating to the sale or disposition of such Holder's Registrable Securities pursuant to the Shelf Registration Statement.

(d) An Exchange Offer Registration Statement pursuant to Section 2(a) hereof will not be deemed to have become effective unless it has been declared effective by the SEC. A Shelf Registration Statement pursuant to Section 2(b) hereof will not be deemed to have become effective unless it has been declared effective by the SEC or is automatically effective upon filing with the SEC as provided by Rule 462 under the Securities Act.

In the event that either the Exchange Offer is not completed or the Shelf Registration Statement, if required pursuant to Section 2(b)(i) or 2(b)(ii) hereof, has not become effective on or prior to October 4, 2006 (the "*Target Registration Date*"), the interest rate on the Registrable Securities will be increased by (i) 0.25% per annum for the first 90-day period commencing from one day after the Target Registration Date and (ii) an additional 0.25% per annum with respect to each subsequent 90-day period, in each case until the Exchange Offer is completed or the Shelf Registration Statement, if required hereby, becomes effective or the Securities covered by such registration statement on which additional interest is being paid cease to be Registrable Securities; provided that the interest rate on the Registrable Securities at which such additional interest accrues may in no event exceed 1.00% per annum. In the event that the Company receives a Shelf Request from the Initial Purchaser pursuant to Section 2(b)(iii), and the Shelf Registration Statement required to be filed thereby has not become effective by the later of (x) September 4, 2006 or (y) 90 days after delivery of such Shelf Request (such later date, the "*Shelf Additional Interest Date*"), then the interest rate on the Registrable Securities held by the Initial Purchaser will be increased by (i) 0.25% per annum for the first 90-day period payable commencing from one day after the Shelf Additional Interest Date and (ii) an additional 0.25% per annum with respect to each subsequent 90-day period, in each case until the Shelf Registration Statement becomes effective or the Registrable Securities held by the Initial Purchaser become freely tradable under the Securities Act, up to a maximum increase of 1.00% per annum. Any additional interest on the Registrable Securities shall be calculated on the same basis on which Base Interest is calculated on the Securities under the Indenture. Any additional interest accrued for any period shall be payable at the relevant interest payment date for such period under the terms of the Securities and the Indenture.

If the Shelf Registration Statement, if required hereby, has become effective and thereafter either ceases to be effective or the Prospectus contained therein ceases to be usable, in each case whether or not permitted by this Agreement, at any time during the Shelf Effectiveness Period, and such failure to

remain effective or usable exists for more than 75 days (whether or not consecutive) in any 12-month period, then the interest rate on the Registrable Securities will be increased by (i) 0.25% per annum for the first 90-day period commencing on the 76th day and (ii) an additional 0.25% per annum for each subsequent 90-day period, in each case ending on such date that the Shelf Registration Statement has again become effective or the Prospectus again becomes usable. Notwithstanding anything to the contrary in this Agreement, in connection with a Shelf Registration Statement, additional interest on the Registrable Securities shall not accrue and by payable to any Holder if the failure of the Company and/or the Guarantors to comply with their obligations hereunder is a result of the failure of such Holder to fulfill its obligations hereunder.

(e) Without limiting the remedies available to the Initial Purchaser and the Holders, the Company and the Guarantors acknowledge that any failure by the Company or the Guarantors to comply with their obligations under Section 2(a) and Section 2(b) hereof may result in material irreparable injury to the Initial Purchaser or the Holders for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of any such failure, the Initial Purchaser or any Holder may obtain such relief as may be required to specifically enforce the Company's and the Guarantors' obligations under Section 2(a) and Section 2(b) hereof.

(f) The Company represents, warrants and covenants that it (including its agents and representatives) will not prepare, make, use, authorize, approve or refer to any "free-writing prospectus" (as defined in Rule 405 under the Securities Act) in connection with the Securities or the Exchange Securities, other than any communication pursuant to Rule 134 under the Securities Act or any document constituting an offer to sell or solicitation of an offer to buy the Securities or the Exchange Securities that falls within the exception from the definition of prospectus in Section 2(a)(10)(a) of the Securities Act.

3. *Registration Procedures*. (a) In connection with their obligations pursuant to Section 2(a) and Section 2(b) hereof, the Company and the Guarantors shall as soon as practicable (unless otherwise stated below):

(i) prepare and file with the SEC a Registration Statement on the appropriate form under the Securities Act, which form (x) shall be selected by the Company and the Guarantors, (y) shall, in the case of a Shelf Registration, be available for the sale of the Registrable Securities by the Holders thereof and (z) shall comply as to form in all material respects with the requirements of the applicable form and include all financial statements required by the SEC to be filed therewith; and use their reasonable best efforts to cause such Registration Statement to become effective and remain effective for the applicable period in accordance with Section 2 hereof;

(ii) prepare and file with the SEC such amendments and post-effective amendments to the applicable Registration Statement as may be necessary to keep such Registration Statement effective for the applicable period in accordance with Section 2 hereof and cause each Prospectus to be supplemented by any required prospectus supplement and, as so supplemented, to be filed pursuant to Rule 424 under the Securities Act; and keep each Prospectus current during the period described in Section 4(3) of and Rule 174 under the Securities Act that is applicable to transactions by brokers or dealers with respect to the Registrable Securities or Exchange Securities;

(iii) in the case of a Shelf Registration, furnish to each Holder of Registrable Securities, to counsel for the Initial Purchaser (if any Registrable Securities held by the Initial Purchaser are included in such registration statement), to one firm of counsel for all such Holders and to each Underwriter of an Underwritten Offering of Registrable Securities, if any, without charge, as many copies of each Prospectus or preliminary prospectus, and any amendment or supplement thereto, as such Holder, counsel or Underwriter may reasonably request in order to facilitate the sale or other disposition of the Registrable Securities thereunder; and the Company and the Guarantors consent to the use of such Prospectus, preliminary prospectus and any amendment or supplement

thereto in accordance with applicable law by each of the Holders of Registrable Securities and any such Underwriters in connection with the offering and sale of the Registrable Securities covered by and in the manner described in such Prospectus, preliminary prospectus or any amendment or supplement thereto in accordance with applicable law;

(iv) use their reasonable best efforts to register or qualify the Registrable Securities under all applicable state securities or blue sky laws of such jurisdictions as any Holder of Registrable Securities covered by a Registration Statement shall reasonably request in writing by the time the applicable Registration Statement becomes effective; cooperate with such Holders in connection with any filings required to be made with the National Association of Securities Dealers, Inc.; and use reasonable best efforts to do any and all other acts and things that may be reasonably necessary or advisable to enable each Holder to complete the disposition in each such jurisdiction of the Registrable Securities owned by such Holder; *provided* that neither the Company nor any Guarantor shall be required to (1) qualify as a foreign corporation or other entity or as a dealer in securities in any such jurisdiction where it would not otherwise be required to so qualify, (2) file any general consent to service of process in any such jurisdiction, (3) subject itself to taxation in any such jurisdiction if it is not so subject or (4) make any changes to its incorporating or organizational documents or limited liability agreement, if applicable, or any other agreement between it and its stockholders or members, if any;

(v) if the Initial Purchaser holds any Registrable Securities, notify counsel for the Initial Purchaser and, in the case of a Shelf Registration, notify each Holder of Registrable Securities and counsel for such Holders promptly and, if requested by any such Holder or counsel, confirm such advice in writing (such notice, a "Suspension Notice") (1) when a Registration Statement has become effective, when any post-effective amendment thereto has been filed and becomes effective and when the Prospectus or any amendment or supplement to the Prospectus has been filed, (2) of any request by the SEC or any state securities authority for amendments and supplements to a Registration Statement or Prospectus or for additional information after the Registration Statement has become effective, (3) of the issuance by the SEC or any state securities authority of any stop order suspending the effectiveness of a Registration Statement or the initiation of any proceedings for that purpose, including the receipt by the Company of any notice of objection of the SEC to the use of a Shelf Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act, (4) if, between the applicable effective date of a Shelf Registration Statement and the closing of any sale of Registrable Securities covered thereby, the representations and warranties of the Company or any Guarantor contained in any underwriting agreement, securities sales agreement or other similar agreement, if any, relating to an offering of such Registrable Securities cease to be true and correct in all material respects or if the Company or any Guarantor receives any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation of any proceeding for such purpose, (5) of the happening of any event during the period a Shelf Registration Statement is effective that makes any statement made in such Shelf Registration Statement or the related Prospectus untrue in any material respect or that requires the making of any changes in such Shelf Registration Statement or Prospectus in order to make the statements therein, with respect to a Prospectus, in the light of the circumstances under which such statements were made, not misleading, (6) of any determination by the Company or any Guarantor that a post-effective amendment to a Registration Statement or any amendment or supplement to the Prospectus would be appropriate; and (7) of any occurrence or existence of any corporate development that, in the reasonable judgment of the Company or any Guarantor, would have a material adverse effect on the business or operations of the Company or any of its subsidiaries; provided, however, that in the case of a Shelf Registration, upon the occurrence of any event of the kind described in this Section 3(a)(3), (5), (6) or (7), the Company and the Guarantors shall be entitled to suspend their obligation to file any amendment to the Shelf Registration Statement,

furnish any supplement or amendment to a Prospectus included in the Shelf Registration Statement, make any other filing with the SEC, cause the Shelf Registration Statement or other filing with the SEC to remain effective or take any similar action (collectively, "Registration Actions"). Upon the termination of such condition, the Company shall give prompt notice thereof to the Holders and shall as promptly as practicable proceed with all Registration Actions that were suspended pursuant to this paragraph;

(vi) use their reasonable best efforts to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement or, in the case of a Shelf Registration, the resolution of any objection of the SEC pursuant to Rule 401(g)(2), including by promptly filing an amendment to such Shelf Registration Statement on the proper form, and provide notice promptly to each Holder of the withdrawal of any such order or such resolution;

(vii) in the case of a Shelf Registration, furnish to each Holder of Registrable Securities, without charge, at least one conformed copy of each Registration Statement and any post-effective amendment thereto (without any documents incorporated therein by reference or exhibits thereto, unless requested);

(viii) in the case of a Shelf Registration, cooperate with the Holders of Registrable Securities to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends and enable such Registrable Securities to be issued in such denominations and registered in such names (consistent with the provisions of the Indenture) as such Holders may reasonably request at three Business Days prior to the closing of any sale of Registrable Securities made by such Holders;

(ix) in the case of a Shelf Registration, upon the occurrence of any event contemplated by Section 3(a)(v)(5) hereof, use their reasonable best efforts to prepare and file with the SEC a supplement or post-effective amendment to such Shelf Registration Statement or the related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered (or, to the extent permitted by law, made available) to purchasers of the Registrable Securities, such Prospectus will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and the Company shall notify the Holders of Registrable Securities to suspend use of the Prospectus as promptly as practicable after the occurrence of such an event, and such Holders hereby agree to suspend use of the Prospectus until the Company and the Guarantors have amended or supplemented the Prospectus to correct such misstatement or omission;

(x) a reasonable time prior to the filing of any Registration Statement, any Prospectus, any amendment to a Registration Statement or amendment or supplement to a Prospectus or of any document that is to be incorporated by reference into a Registration Statement or a Prospectus after initial filing of a Registration Statement, provide copies of such document to the Initial Purchaser and its counsel (if the Initial Purchaser holds any Registrable Securities) (and, in the case of a Shelf Registration Statement, to the Holders of Registrable Securities and their counsel) and make such of the representatives of the Company and the Guarantors as shall be reasonably requested by the Initial Purchaser or its counsel (if the Initial Purchaser holds any Registrable Securities) (and, in the case of a Shelf Registration Statement, the Holders of Registrable Securities or their counsel) available for discussion of such document; and the Company and the Guarantors shall not, at any time after initial filing of a Registration Statement, use or file any Prospectus, any amendment of or supplement to a Registration Statement or a Prospectus, or any document that is to be incorporated by reference into a Registration Statement or a Prospectus, of which the Initial Purchaser and its counsel (if the Initial Purchaser holds any Registrable Securities) (and, in the case of a Shelf Registration Statement, the Holders of Registrable

Securities and their counsel) shall not have previously been advised and furnished a copy or to which the Initial Purchaser or its counsel (if the Initial Purchaser holds any Registrable securities) (and, in the case of a Shelf Registration Statement, the Holders of Registrable Securities or their counsel) shall reasonably object within five Business Days after receipt thereof, unless the Company believes such Prospectus, amendment or supplement to a Prospectus or document that is to be incorporated by reference into a Registration Statement or Prospectus is required by applicable law;

(xi) obtain a CUSIP number for all Exchange Securities or Registrable Securities, as the case may be, not later than the initial effective date of a Registration Statement covering such Exchange Securities or Registrable Securities;

(xii) cause the Indenture to be qualified under the Trust Indenture Act in connection with the registration of the Exchange Securities or Registrable Securities, as the case may be; cooperate with the Trustee and the Holders to effect such changes to the Indenture as may be required for the Indenture to be so qualified in accordance with the terms of the Trust Indenture Act; and execute, and use their reasonable best efforts to cause the Trustee to execute, all documents as may be required to effect such changes and all other forms and documents required to be filed with the SEC to enable the Indenture to be so qualified in a timely manner;

(xiii) in the case of a Shelf Registration, make available for inspection by a representative of the Holders of a majority of the outstanding aggregate principal amount of the Registrable Securities to be included in such Shelf Registration (an "*Inspector*"), any Underwriter participating in any disposition pursuant to such Shelf Registration Statement, any attorneys and accountants designated by such Holders and any attorneys (but not more than one firm of counsel acting for all such Holders) and accountants designated by such Underwriter, at reasonable times and in a reasonable manner, all pertinent financial and other records, documents and properties of the Company and its subsidiaries, and cause the respective officers, directors and employees of the Company and the Guarantors to supply all information reasonably requested by any such Inspector, Underwriter, attorney or accountant to conduct reasonable investigation within the meaning of Section 11 of the Securities Act in connection with a Shelf Registration Statement; *provided* that that foregoing investigation and information gathering shall be coordinated on behalf of such parties by one firm of counsel designated by and on behalf of such parties; and *provided* further that if any such information is identified by the Company or any Guarantor as being confidential or proprietary, each Person receiving such information shall take such actions as are reasonably necessary to protect the confidentiality of such information to the extent such action is otherwise not inconsistent with, an impairment of or in derogation of the rights and interests of any Inspector, Holder or Underwriter);

(xiv) in the case of a Shelf Registration, use their reasonable best efforts to cause all Registrable Securities to be listed on any securities exchange or any automated quotation system on which similar securities issued or guaranteed by the Company or any Guarantor are then listed if requested by the Majority Holders, to the extent such Registrable Securities satisfy applicable listing requirements;

(xv) if reasonably requested by any Holder of Registrable Securities covered by a Shelf Registration Statement, promptly include in a Prospectus supplement or post-effective amendment such information with respect to such Holder as such Holder reasonably requests to be included therein and make all required filings of such Prospectus supplement or such post-effective amendment promptly after Company has received notification of the matters to be so included in such filing;

(xvi) in the case of a Shelf Registration, enter into such customary agreements, including, but not limited to, an underwriting agreement which contains indemnities substantially similar to those

contained herein, and take all such other actions in connection therewith (including those requested by the Holders of a majority in principal amount of the Registrable Securities covered by the Shelf Registration Statement) in order to expedite or facilitate the disposition of such Registrable Securities including, but not limited to, an Underwritten Offering and in such connection, (1) to the extent possible, make such representations and warranties to and any Underwriters of such Registrable Securities with respect to the business of the Company and its subsidiaries and the Registration Statement, Prospectus and documents incorporated by reference or deemed incorporated by reference, if any, in each case, in form, substance and scope as are customarily made by issuers to underwriters in underwritten offerings and confirm the same if and when required by the applicable underwriting agreement, (2) obtain opinions of counsel to the Company and the Guarantors (which counsel and opinions, in form, scope and substance, shall be reasonably satisfactory to such Underwriters and their respective counsel) addressed to the Underwriters of Registrable Securities, in customary form subject to customary limitations, assumptions and exclusions and covering the matters customarily covered in opinions requested in underwritten offerings, (3) obtain "comfort" letters from the independent certified public accountants of the Company and the Guarantors (and, if necessary, any other certified public accountant of any subsidiary of the Company or any Guarantor, or of any business acquired by the Company or any Guarantor for which financial statements and financial data are or are required to be included in the Registration Statement) addressed to the Underwriter of Registrable Securities, such letters to be in customary form and covering matters of the type customarily covered in "comfort" letters in connection with underwritten offerings, including but not limited to financial information contained in any preliminary prospectus or Prospectus and (4) deliver such documents and certificates as may be reasonably requested by the Underwriters, and which are customarily delivered in underwritten offerings, to evidence the continued validity of the representations and warranties of the Company and the Guarantors made pursuant to clause (1) above and to evidence compliance with any customary conditions contained in the applicable underwriting agreement; and

(xvii) so long as any Registrable Securities remain outstanding, cause each Additional Guarantor upon the creation or acquisition by the Company of such Additional Guarantor, to execute a counterpart to this Agreement in the form attached hereto as Annex A and to deliver such counterpart to the Initial Purchaser no later than five Business Days following the execution thereof.

(b) In the case of a Shelf Registration Statement, the Company may require each Holder of Registrable Securities to furnish to the Company such information regarding such Holder and the proposed disposition by such Holder of such Registrable Securities as the Company and the Guarantors may from time to time reasonably request in writing. The Company and the Guarantors shall be entitled to refuse to include for registration the Registrable Securities held by any Holder who fails to comply with such request and provide the requested information to the extent such information is required by applicable law to be included in the Shelf Registration Statement, and such Holder shall not be entitled to the benefits of any provision of this Agreement.

(c) In the case of a Shelf Registration Statement, each Holder of Registrable Securities covered in such Shelf Registration Statement agrees that, upon receipt of any notice from the Company and the Guarantors of the happening of any event of the kind described in Section 3(a)(v)(2), (3), (5), (6) or (7) hereof, such Holder will forthwith discontinue disposition of Registrable Securities pursuant to the Shelf Registration Statement until such Holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 3(a)(ix) hereof, or until it is advised in writing by the Company that the use of the Prospectus may be resumed, and, if so directed by the Company and the Guarantors, such Holder will deliver to the Company and the Guarantors all copies in its possession,

other than permanent file copies then in such Holder's possession, of the Prospectus covering such Registrable Securities that is current at the time of receipt of such notice.

(d) If the Company and the Guarantors shall give any notice pursuant to Section 3(a)(v) hereof to suspend the disposition of Registrable Securities pursuant to a Shelf Registration Statement, the Company and the Guarantors shall extend the period during which such Shelf Registration Statement shall be maintained effective pursuant to this Agreement by the number of days equal to the number of days in the period from and including the date of the giving of such notice to and including the date when the Holders of such Registrable Securities shall have received copies of the supplemented or amended Prospectus necessary to resume such dispositions. The Company and the Guarantors may give any such notice (pursuant to Section 3(a)(v)(4), (5), (6) or (7) only twice during any 365-day period and any such suspensions shall not exceed an aggregate of 75 days in any 365-day period and there shall not be more than two suspensions in effect during any 365-day period.

(e) The Holders of a majority of the outstanding aggregate principal amount of Registrable Securities to be included in a Shelf Registration Statement shall be entitled to give the Company a written request requesting that the sale of Registrable Securities covered by such registration statement be made in an Underwritten Offering. In any such Underwritten Offering, the investment bank or investment banks and manager or managers (each an "*Underwriter*") that will administer the offering will be selected by the Holders of a majority of the outstanding aggregate principal amount of the Registrable Securities included in such offering, subject to the consent of the Company (not to be unreasonably withheld). Such Holders shall be responsible for all underwriting commissions and discounts in connection therewith. No Holder of Registrable Securities may participate in any Underwritten Offering unless such Holder (i) agrees to sell such Holder's Registrable Securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents required under the terms of such underwriting arrangements.

4. *Participation of Broker-Dealers in Exchange Offer.* (a) The Staff has taken the position that any broker-dealer that receives Exchange Securities for its own account in the Exchange Offer in exchange for Securities that were acquired by such broker-dealer as a result of market-making or other trading activities (a "*Participating Broker-Dealer*") may be deemed to be an "underwriter" within the meaning of the Securities Act and must deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such Exchange Securities.

The Company and the Guarantors understand that it is the Staff's position that if the Prospectus contained in the Exchange Offer Registration Statement includes a plan of distribution containing a statement to the above effect and the means by which Participating Broker-Dealers may resell the Exchange Securities, without naming the Participating Broker-Dealers or specifying the amount of Exchange Securities owned by them, such Prospectus may be delivered by Participating Broker-Dealers (or, to the extent permitted by law, made available to purchasers) to satisfy their prospectus delivery obligation under the Securities Act in connection with resales of Exchange Securities for their own accounts, so long as the Prospectus otherwise meets the requirements of the Securities Act.

(b) In light of the above, and notwithstanding the other provisions of this Agreement, the Company and the Guarantors agree to use their reasonable best efforts to amend or supplement the Prospectus contained in the Exchange Offer Registration Statement for a period ending on the earlier of (i) 180 days after the last Exchange Date (as such period may be extended pursuant to Section 3(d) of this Agreement), (ii) the date when all Registrable Securities covered by such registration statement have been sold pursuant thereto and (iii) the date on which a Participating Broker-Dealer is no longer required to deliver a prospectus in connection with market-making or other trading activities, if requested by the Initial Purchaser or by one or more Participating Broker-Dealers, in order to expedite

or facilitate the disposition of any Exchange Securities by Participating Broker-Dealers consistent with the positions of the Staff recited in Section 4(a) above. The Company and the Guarantors further agree that Participating Broker-Dealers shall be authorized to deliver such Prospectus (or, to the extent permitted by law, make available) during such period in connection with the resales contemplated by this Section 4. The Participating Broker-Dealers shall not be authorized by the Company to deliver and shall not deliver such Prospectus after such period in connection with the resales contemplated by this Section 4.

(c) The Initial Purchaser shall have no liability to the Company, any Guarantor or any Holder with respect to any request that it may make pursuant to Section 4(b) above.

5. *Indemnification and Contribution*. (a) The Company and each Guarantor, jointly and severally, agree to indemnify and hold harmless the Initial Purchaser and each Holder, their respective affiliates, directors and officers and each Person, if any, who controls the Initial Purchaser or any Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, legal fees and other expenses reasonably incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, that arise out of, or are based upon, (1) any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or any omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein not misleading, or (2) any untrue statement or alleged untrue statement of a material fact contained in any Prospectus, any Free Writing Prospectus used in violation of this Agreement or any "issuer information" ("*Issuer Information*") filed or required to be filed pursuant to Rule 433(d) under the Securities Act (the Prospectus, Free Writing Prospectus and Issuer Information, collectively the "*Covered Information*"), or any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case except insofar as such losses, claims, damages or liabilities arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to the Initial Purchaser or information relating to any Holder furnished to the Company in writing through JPMorgan or any selling Holder expressly for use therein; *provided, however,* that the foregoing indemnity agreement with respect to the Covered Information shall not inure to the benefit of any indemnified person, where it shall have been determined by a court of competent jurisdiction by final and nonappealable judgment that (i) prior to the applicable Time of Sale (within the meaning of the Securities Act), the Company shall have notified each Holder that the Registration Statement or Covered Information, as applicable, contains an untrue statement of material fact or omits to state therein a material fact required to be stated therein in order to make the statements therein not misleading in light of the circumstances under which they were made, (ii) such untrue statement or omission of a material fact was corrected or supplemented, as the case may be, in an amendment or supplement to the Registration Statement or Covered Information, as applicable (the "Supplemental Information") and such Supplemental Information was provided to such Holder, or in the case of an Underwritten Offering, the Underwriter(s) reasonably in advance of the applicable Time of Sale (within the meaning of the Securities Act) so that such Supplemental Information could have been provided to such person prior to such Time of Sale, (iii) such Holder or, in the case of an Underwritten Offering, the Underwriter(s) did not convey such Supplemental Information to such person at or prior to the applicable Time of Sale (within the meaning of the Securities Act), and (iv) such loss, claim, damage or liability would not have occurred had such Holder or Underwriter(s), as the case may be, conveyed the Supplemental Information to such person.

(b) Each Holder agrees, severally and not jointly, to indemnify and hold harmless the Company, the Guarantors, the Initial Purchaser and the other selling Holders, the directors of the Company and the Guarantors, each officer of the Company and the Guarantors who signed the Registration

Statement and each Person, if any, who controls the Company, the Guarantors, the Initial Purchaser and any other selling Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the indemnity set forth in paragraph (a) above, but only with respect to any losses, claims, damages or liabilities that arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to such Holder furnished to the Company in writing by or on behalf of such Holder expressly for use in any Registration Statement and any Prospectus.

(c) If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Person in respect of which indemnification may be sought pursuant to either paragraph (a) or (b) above, such Person (the "*Indemnified Person*") shall promptly notify the Person against whom such indemnification may be sought (the "*Indemnifying Person*") in writing; *provided* that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have under this Section 5 except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and *provided, further*, that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have to an Indemnified Person otherwise than under this Section 5. If any such proceeding shall be brought or asserted against an Indemnified Person and it shall have notified the Indemnifying Person thereof, the Indemnifying Person shall retain counsel reasonably satisfactory to the Indemnified Person (who shall not, without the consent of the Indemnified Person, be counsel to the Indemnifying Person) to represent the Indemnified Person and any others entitled to indemnification pursuant to this Section 5 that the Indemnifying Person may designate in such proceeding and shall pay the fees and expenses of such proceeding and shall pay the fees and expenses of such counsel related to such proceeding, as incurred. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary; (ii) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person; (iii) the Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the Indemnifying Person; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood and agreed that the Indemnifying Person shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be reimbursed as they are incurred. Any such separate firm (x) for the Initial Purchaser, its affiliates, directors and officers and any control Persons of the Initial Purchaser shall be designated in writing by JPMorgan, (y) for any Holder, its directors and officers and any control Persons of such Holder shall be designated in writing by the Majority Holders and (z) in all other cases shall be designated in writing by the Company. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify each Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an Indemnified Person shall have requested that an Indemnifying Person reimburse the Indemnified Person for fees and expenses of counsel as contemplated by this paragraph, the Indemnifying Person shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 60 days after receipt by the Indemnifying Person of such request, (ii) the Indemnifying Person shall not have reimbursed the Indemnified Person in accordance with such request prior to the date of such settlement and (iii) the Indemnified Person shall have given at least 30 days prior written notice of its intention to settle. No Indemnifying Person shall, without the written consent of the

Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnification could have been sought hereunder by such Indemnified Person, unless such settlement (A) includes an unconditional release of such Indemnified Person, in form and substance reasonably satisfactory to such Indemnified Person, from all liability on claims that are the subject matter of such proceeding and (B) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

(d) If the indemnification provided for in paragraphs (a) and (b) above is unavailable to or insufficient to hold harmless an Indemnified Person in respect of any losses, claims, damages or liabilities referred to therein, then each Indemnifying Person under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Guarantors from the offering of the Securities and the Exchange Securities, on the one hand, and by the Holders from receiving Securities or Exchange Securities registered under the Securities Act, on the other hand, or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the Company and the Guarantors on the one hand and the Holders on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative fault of the Company and the Guarantors on the one hand and the Holders on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company and the Guarantors on the one hand or by the Holders on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) The Company, the Guarantors and the Holders agree that it would not be just and equitable if contribution pursuant to this Section 5 were determined by *pro rata* allocation (even if the Holders were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph (d) above. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in paragraph (d) above shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such Indemnified Person in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 5, in no event shall a Holder be required to contribute any amount in excess of the amount by which the total price at which the Securities or Exchange Securities sold by such Holder exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The Holders' obligations to contribute pursuant to this Section 5 are several in proportion to the respective principal amount of the Registrable Securities held by each Holder hereunder and not joint.

(f) The remedies provided for in this Section 5 are not exclusive and shall not limit any rights or remedies that may otherwise be available to any Indemnified Person at law or in equity.

(g) The indemnity and contribution provisions contained in this Section 5 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of the Initial Purchaser or any Holder or any Person controlling the Initial Purchaser or any Holder, or by or on behalf of the Company or the Guarantors or the officers or directors of or any Person controlling the Company or the Guarantors, (iii) acceptance of any of the

Exchange Securities and (iv) any sale of Registrable Securities pursuant to a Shelf Registration Statement.

6. *General*.

(a) *No Inconsistent Agreements.* The Company and the Guarantors represent, warrant and agree that (i) the rights granted to the Holders hereunder do not in any way conflict with and are not inconsistent with the rights granted to the holders of any other outstanding securities issued or guaranteed by the Company or any Guarantor under any other agreement and (ii) neither the Company nor any Guarantor has entered into, or on or after the date of this Agreement will enter into, any agreement that is inconsistent with the rights granted to the Holders of Registrable Securities in this Agreement or otherwise conflicts with the provisions hereof.

(b) *Amendments and Waivers.* The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given unless the Company has obtained the written consent of Holders of at least a majority of the aggregate principal amount of the outstanding Registrable Securities (excluding any Registrable Securities owned directly or indirectly by the Company or any of its affiliates) affected by such amendment, modification, supplement, waiver or consent; *provided* that no amendment, modification, supplement, waiver or consent to any departure from the provisions of Section 5 hereof shall be effective as against any Holder of Registrable Securities unless consented to in writing by such Holder. Any amendments, modifications, supplements, waivers or consents pursuant to this Section 6(b) shall be by a writing executed by each of the parties hereto.

(c) *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, registered first-class mail, telex, telecopier, or any courier guaranteeing overnight delivery (i) if to a Holder, at the most current address given by such Holder to the Company by means of a notice given in accordance with the provisions of this Section 6(c), which address initially is, with respect to the Initial Purchaser, the address set forth in the Purchase Agreement; (ii) if to the Company and the Guarantors, initially at the Company's address set forth in the Purchase Agreement and thereafter at such other address, notice of which is given in accordance with the provisions of this Section 6(c); and (iii) to such other persons at their respective addresses as provided in the Purchase Agreement and thereafter at such other address, notice of which is given in accordance with the provisions of this Section 6(c). All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt is acknowledged, if telecopied; and on the next Business Day if timely delivered to an air courier guaranteeing overnight delivery. Copies of all such notices, demands or other communications shall be concurrently delivered by the Person giving the same to the Trustee, at the address specified in the Indenture.

(d) *Successors and Assigns.* This Agreement shall inure to the benefit of and be binding upon the successors, assigns and transferees of each of the parties, including, without limitation and without the need for an express assignment, subsequent Holders; *provided* that nothing herein shall be deemed to permit any assignment, transfer or other disposition of Registrable Securities in violation of the terms of the Purchase Agreement or the Indenture. If any transferee of any Holder shall acquire Registrable Securities in any manner, whether by operation of law or otherwise, such Registrable Securities shall be held subject to all the terms of this Agreement, and by taking and holding such Registrable Securities such Person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement and such Person shall be entitled to receive the benefits hereof. The Initial Purchaser (in its capacity as Initial Purchaser) shall have no liability or obligation to the Company or the Guarantors with respect to any failure by a Holder to comply with, or any breach by any Holder of, any of the obligations of such Holder under this Agreement.

(e) *Third Party Beneficiaries.* Each Holder shall be a third party beneficiary to the agreements made hereunder between the Company and the Guarantors, on the one hand, and the Initial Purchaser, on the other hand, and shall have the right to enforce such agreements directly to the extent it deems such enforcement necessary or advisable to protect its rights or the rights of other Holders hereunder.

(f) *Counterparts.* This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(g) *Headings.* The headings in this Agreement are for convenience of reference only, are not a part of this Agreement and shall not limit or otherwise affect the meaning hereof.

(h) *Governing Law*. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(i) *Entire Agreement; Severability.* This Agreement contains the entire agreement between the parties relating to the subject matter hereof and supersedes all oral statements and prior writings with respect thereto. If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable or against public policy, the remainder of the terms, provisions, covenants and restrictions contained herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated. The Company, the Guarantors and the Initial Purchaser shall endeavor in good faith negotiations to replace the invalid, void or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, void or unenforceable provisions.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

DAVE & BUSTERS, INC.

By: _____

Name:
Title:

D&B LEASING, INC.
D&B REALTY HOLDING, INC.
DANB TEXAS, INC.
DAVE & BUSTER'S I, L.P.
DAVE & BUSTER'S MANAGEMENT CORPORATION, INC.
DAVE & BUSTER'S OF CALIFORNIA, INC.
DAVE & BUSTER'S OF COLORADO, INC.
DAVE & BUSTER'S OF FLORIDA, INC.
DAVE & BUSTER'S OF GEORGIA, INC.
DAVE & BUSTER'S OF HAWAII, INC.
DAVE & BUSTER'S OF ILLINOIS, INC.
DAVE & BUSTER'S OF KANSAS, INC.
DAVE & BUSTER'S OF MARYLAND, INC.
DAVE & BUSTER'S OF NEBRASKA, INC.
DAVE & BUSTER'S OF NEW YORK, INC.
DAVE & BUSTER'S OF PENNSYLVANIA, INC.
DAVE & BUSTER'S OF PITTSBURGH, INC.
TANGO ACQUISITION, INC.
TANGO LICENSE CORPORATION
TANGO OF ARIZONA, INC.
TANGO OF ARUNDEL, INC.
TANGO OF FARMINGDALE, INC.
TANGO OF FRANKLIN, INC.
TANGO OF HOUSTON, INC.
TANGO OF MINNESOTA, INC.
TANGO OF NORTH CAROLINA, INC.
TANGO OF SUGARLOAF, INC.
TANGO OF TENNESSEE, INC.
TANGO OF WESTBURY, INC.

By: _____

Name:
Title:

Confirmed and accepted as of the date first above written:

J.P. MORGAN SECURITIES INC.

By: _____

Authorized Signatory

Counterpart to Registration Rights Agreement

The undersigned hereby absolutely, unconditionally and irrevocably agrees as a Guarantor (as defined in the Registration Rights Agreement, dated as of March 8, 2006 by and among the Company, a Missouri corporation, the guarantors party thereto and J.P. Morgan Securities Inc., as the Initial Purchaser) to be bound by the terms and provisions of such Registration Rights Agreement.

IN WITNESS WHEREOF, the undersigned has executed this counterpart as of .

[NAME]

By: _____

Name:
Title:

List of Guarantors

D&B Leasing, Inc.
D&B Realty Holding, Inc.
DANB Texas, Inc.
Dave & Buster's I, L.P.
Dave & Buster's Management Corporation, Inc.
Dave & Buster's of California, Inc.
Dave & Buster's of Colorado, Inc.
Dave & Buster's of Florida, Inc.
Dave & Buster's of Georgia, Inc.
Dave & Buster's of Hawaii, Inc.
Dave & Buster's of Illinois, Inc.
Dave & Buster's of Kansas, Inc.
Dave & Buster's of Maryland, Inc.
Dave & Buster's of Nebraska, Inc.
Dave & Buster's of New York, Inc.
Dave & Buster's of Pennsylvania, Inc.
Dave & Buster's of Pittsburgh, Inc.
Tango Acquisition, Inc.
Tango License Corporation
Tango of Arizona, Inc.
Tango of Arundel, Inc.
Tango of Farmingdale, Inc.
Tango of Franklin, Inc.
Tango of Houston, Inc.
Tango of Minnesota, Inc.
Tango of North Carolina, Inc.
Tango of Sugarloaf, Inc.
Tango of Tennessee, Inc.
Tango of Westbury, Inc.

Exhibit 4.4

$175,000,000

WS MIDWAY ACQUISITION SUB, INC.
(to be merged with and into DAVE & BUSTER'S, INC.)

$11^{1}/_{4}$% Senior Notes due 2014

Purchase Agreement

March 3, 2006

J.P. Morgan Securities Inc.
270 Park Avenue
New York, New York 10017

Ladies and Gentlemen:

WS Midway Acquisition Sub, Inc., a Missouri corporation (the "Acquisition Sub"), to be merged with and into Dave & Buster's, Inc., a Missouri corporation (the "Company"), upon the completion of such merger, proposes that immediately following such merger the Company will issue and sell to you, as initial purchaser (the "Initial Purchaser"), $175,000,000 principal amount of its $11^{1}/_{4}$% Senior Notes due 2014 (the "Securities"). The Securities will be issued pursuant to an Indenture to be dated as of March 8, 2006 (the "Indenture") among the Company, the guarantors listed in Schedule 1 hereto (the "Guarantors") and The Bank of New York Trust Company, N.A., as trustee (the "Trustee"), and will be guaranteed on an unsecured senior basis by each of the Guarantors (the "Guarantees").

The Acquisition Sub, WS Midway Holdings, Inc., a Delaware corporation and the direct parent of the Acquisition Sub ("Parent"), and the Company have entered into an Agreement and Plan of Merger dated as of December 8, 2005 (the "Merger Agreement"), pursuant to which the Parent will acquire the Company through the merger of the Acquisition Sub, a direct, wholly-owned subsidiary of the Parent, with and into the Company (the "Merger"). Upon consummation of the Merger, the separate corporate existence of the Acquisition Sub will cease and the Company will continue as the surviving corporation. For purposes of this Agreement, the term "Transactions" is used in the same way as such term is used in the Preliminary Offering Memorandum (as defined below) and means, collectively, the Merger and the related financings in connection therewith and all other transactions related to the Merger, in each case as described in the Preliminary Offering Memorandum. The net proceeds of the offering of the Securities will be used, together with borrowings under the Company's new senior secured credit facility and funds received from the equity investments made by affiliates of Wellspring Capital Management LLC and HBK Investments L.P. to finance a portion of the acquisition of the Company, to refinance existing indebtedness and to pay $15.0 million of related fees and expenses. The Transactions are expected to be consummated on a substantially concurrent basis on the Closing Date (as defined in Section 2(a) hereof).

Upon consummation of the Transactions, the Company and each Guarantor will enter a joinder agreement to this Agreement, the form of which is attached hereto as Exhibit A (the "Joinder Agreement"), pursuant to which they will become a party to this Agreement. Notwithstanding anything in this Agreement to the contrary, the representations, warranties and agreements of each of the Company and the Guarantors contained in this Agreement shall not become effective until the consummation of the Transactions, at which time such representations, warranties and agreements shall become effective as of the date hereof pursuant to the terms of the Joinder Agreement and thereafter all representations, warranties, agreements and obligations of the Company and the Guarantors shall be joint and several.

The Securities will be sold to the Initial Purchaser without being registered under the Securities Act of 1933, as amended (the "Securities Act"), in reliance upon an exemption therefrom. The

Acquisition Sub and the Company have prepared a preliminary offering memorandum dated February 17, 2006 (the "Preliminary Offering Memorandum") and will prepare an offering memorandum dated the date hereof (the "Offering Memorandum") setting forth information concerning the Acquisition Sub, the Company and the Securities. Copies of the Preliminary Offering Memorandum have been, and copies of the Offering Memorandum will be, delivered by the Acquisition Sub to the Initial Purchaser pursuant to the terms of this Agreement. The Acquisition Sub hereby confirms that it has authorized the use of the Preliminary Offering Memorandum, the other Time of Sale Information, if any (as defined below) and the Offering Memorandum in connection with the offering and resale of the Securities by the Initial Purchaser in the manner contemplated by this Agreement. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Preliminary Offering Memorandum. References herein to the Preliminary Offering Memorandum, the Time of Sale Information and the Offering Memorandum shall be deemed to refer to and include any document incorporated by reference therein.

At or prior to the time when sales of the Securities were first made (the "Time of Sale"), the following information shall have been prepared (collectively, the "Time of Sale Information"): the Preliminary Offering Memorandum as supplemented or amended by the written communications listed on Annex A hereto and the electronic road show listed on Annex A hereto.

Holders of the Securities (including the Initial Purchaser and its direct and indirect transferees) will be entitled to the benefits of a Registration Rights Agreement, to be dated the Closing Date (as defined below) and substantially in the form attached hereto as Exhibit B (the "Registration Rights Agreement"), pursuant to which the Company and the Guarantors will agree to file one or more registration statements with the Securities and Exchange Commission (the "Commission") providing for the registration under the Securities Act of the Securities or the Exchange Securities referred to (and as defined) in the Registration Rights Agreement.

The Acquisition Sub, the Company and the Guarantors hereby confirm their agreement with the Initial Purchaser concerning the purchase and resale of the Securities, as follows:

1. *Purchase and Resale of the Securities.*

(a) The Acquisition Sub and the Company agree that upon the consummation of the Merger, the Company will issue and sell the Securities to the Initial Purchaser as provided in this Agreement, and the Initial Purchaser, on the basis of the representations, warranties and agreements set forth herein and subject to the conditions set forth herein, agrees to purchase from the Company the Securities at a price equal to 97.625% of the principal amount thereof plus accrued interest, if any, from March 15, 2006 to the Closing Date, payable on the Closing Date. The Company will not be obligated to deliver any of the Securities except upon payment for all the Securities to be purchased as provided herein.

(b) The Company understands that the Initial Purchaser intends to offer the Securities for resale on the terms set forth in the Time of Sale Information. The Initial Purchaser represents, warrants and agrees that:

(i) it is a qualified institutional buyer within the meaning of Rule 144A under the Securities Act (a "QIB") and an accredited investor within the meaning of Rule 501(a) under the Securities Act;

(ii) it has not solicited offers for, or offered or sold, and will not solicit offers for, or offer or sell, the Securities by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) of Regulation D under the Securities Act ("Regulation D") or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act; and

(iii) it has not solicited offers for, or offered or sold, and will not solicit offers for, or offer or sell, the Securities as part of their initial offering except:

(A) within the United States to persons whom it reasonably believes to be QIBs in transactions pursuant to Rule 144A under the Securities Act ("Rule 144A") and in connection with each such sale, it has taken or will take reasonable steps to ensure that the purchaser of the Securities is aware that such sale is being made in reliance on Rule 144A; or

(B) in accordance with the restrictions set forth in Annex C hereto.

(c) The Initial Purchaser acknowledges and agrees that the Acquisition Sub (and from and after the execution of the Joinder Agreement, the Company and the Guarantors), and for purposes of the opinions to be delivered to the Initial Purchaser pursuant to Sections 6(i) and 6(k), counsel for the Acquisition Sub, the Company and the Guarantors and counsel for the Initial Purchaser, respectively, may rely upon the accuracy of the representations and warranties of the Initial Purchaser, and compliance by the Initial Purchaser with its agreements, contained in paragraph (b) above (including Annex C hereto), and the Initial Purchaser hereby consents to such reliance.

(d) The Acquisition Sub, and upon execution and delivery of the Joinder Agreement, the Company and the Guarantors acknowledge and agree that the Initial Purchaser may offer and sell Securities to or through any affiliate of the Initial Purchaser and that any such affiliate may offer and sell Securities purchased by it to or through the Initial Purchaser.

(e) The Acquisition Sub, and upon execution and delivery of the Joinder Agreement, the Company and the Guarantors acknowledge and agree that the Initial Purchaser is acting solely in the capacity of an arm's length contractual counterparty to the Acquisition Sub, the Company and the Guarantors with respect to the offering of Securities contemplated hereby (including in connection with determining the terms of the offering) and not as financial advisors or fiduciaries to, or agents of, the Acquisition Sub, the Company, the Guarantors or any other person. Additionally, the Initial Purchaser is not advising the Acquisition Sub, the Company, the Guarantors or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. The Acquisition Sub, the Company and the Guarantors shall consult with their own advisors concerning such matters and shall be responsible for making their own independent investigation and appraisal of the transactions contemplated hereby, and the Initial Purchaser shall not have any responsibility or liability to the Acquisition Sub, the Company or the Guarantors with respect thereto. Any review by the Initial Purchaser of the Acquisition Sub, the Company, the Guarantors, and the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Initial Purchaser, as the case may be, and shall not be on behalf of the Acquisition Sub, the Company, the Guarantors or any other person.

2. *Payment and Delivery.* (a) Payment for and delivery of certificates for the Securities will be made at the offices of Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York at 10:00 A.M., New York City time, on March 8, 2006, or at such other time or place on the same or such other date, not later than the fifth business day thereafter, as the Initial Purchaser and the Company may agree upon in writing. The time and date of such payment and delivery is referred to herein as the "Closing Date".

(b) Payment for the Securities shall be made by wire transfer in immediately available funds to the account(s) specified by the Company to the Initial Purchaser against delivery to the nominee of The Depository Trust Company, for the account of the Initial Purchaser, of one or more global notes representing the Securities (collectively, the "Global Note"), with any transfer taxes payable in connection with the sale of the Securities duly paid by the Company. The Global Note will be made available for inspection by the Initial Purchaser not later than 1:00 P.M., New York City time, on the business day prior to the Closing Date.

3. *Representations and Warranties of the Acquisition Sub, the Company and the Guarantors.* As of the date hereof and at the Closing Date, the Acquisition Sub represents and warrants, and the Company and the Guarantors jointly and severally represent and warrant at the Closing Date upon the due authorization, execution and delivery of the Joinder Agreement, in each case, to the Initial Purchaser that:

(a) *Preliminary Offering Memorandum, Time of Sale Information and Offering Memorandum.* The Preliminary Offering Memorandum, as supplemented by the Prospectus Supplement dated March 3, 2006 (the "Prospectus Supplement"), as of the date of the Prospectus Supplement, did not, the Time of Sale Information, at the Time of Sale, did not, and at the Closing Date, will not, and the Offering Memorandum, as of its date, did not and, as of the Closing Date, will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that the Acquisition Sub, the Company and the Guarantors make no representation or warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to the Initial Purchaser furnished to the Acquisition Sub in writing by the Initial Purchaser expressly for use in the Preliminary Offering Memorandum, the Time of Sale Information or the Offering Memorandum (or any amendment or supplement thereto).

(b) *Additional Written Communications*. Other than the Preliminary Offering Memorandum, the Time of Sale Information and the Offering Memorandum, the Acquisition Sub, the Company and the Guarantors (including their respective agents and representatives, other than the Initial Purchaser in its capacity as such) have not made, used, prepared, authorized, approved or referred to and will not prepare, make, use, authorize, approve or refer to any written communication that constitutes an offer to sell or solicitation of an offer to buy the Securities other than the documents listed on Annex A hereto, including a term sheet substantially in the form of Annex B hereto, and other written communications used in accordance with Section 4(c), if any.

(c) *Incorporated Documents*. The documents, if any, incorporated by reference in each of the Time of Sale Information and the Offering Memorandum, when filed with the Commission, conformed or will conform, as the case may be, in all material respects to the requirements of the Exchange Act and the rules and regulations of the Commission thereunder, and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(d) *Financial Statements.* The financial statements and the related notes thereto included in each of the Time of Sale Information and the Offering Memorandum present fairly in all material respects the consolidated financial position of the Company and the Company's subsidiaries as of and at the dates indicated and the results of their operations and the changes in their cash flows for the periods specified; such financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods covered thereby except as may be expressly stated otherwise in the related notes thereto; the other financial information included in each of the Time of Sale Information and the Offering Memorandum has been derived from the accounting records of the Company and the Company's subsidiaries and presents fairly in all material respects the information shown thereby; and the *pro forma* financial information and the related notes thereto included in each of the Time of Sale Information and the Offering Memorandum has been prepared in accordance with the Commission's rules and guidance with respect to *pro forma* consolidated financial information, and the assumptions used in preparation of such *pro forma* consolidated financial information are reasonable and are set forth in each of the Time of Sale Information and the Offering Memorandum.

(e) *No Material Adverse Change.* Except as otherwise disclosed in each of the Time of Sale Information and the Offering Memorandum, since the date of the most recent financial statements of the Company included in each of the Time of Sale Information and the Offering Memorandum, (i) there has not been any material change in the capital stock or long-term debt of the Acquisition Sub, the Company or any of the Company's subsidiaries, or any dividend or distribution of any kind declared, set aside for payment, paid or made by the Acquisition Sub or the Company on any class of capital stock; (ii) there has not been any material adverse change, or any development involving a prospective material adverse change, in or affecting the business, properties, management, financial position, or results of operations of the Acquisition Sub, the Company and the Company's subsidiaries taken as a whole or on the performance by the Acquisition Sub, the Company and the Guarantors of their obligations under the Securities and the Guarantees (a "Material Adverse Effect"); (iii) none of the Acquisition Sub, the Company or any of the Company's subsidiaries has entered into any transaction or agreement that is material to the Acquisition Sub, the Company and the Company's subsidiaries taken as a whole, other than those in the ordinary course of business, or incurred any liability or obligation, direct or contingent, that is material to the Acquisition Sub, the Company and the Company's subsidiaries taken as a whole, other than those in the ordinary course of business; and (iv) none of the Acquisition Sub, the Company or any of the Company's subsidiaries has sustained any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or governmental or regulatory authority, except in the case of (iv), that would result in a Material Adverse Effect.

(f) *Organization and Good Standing.* The Acquisition Sub, the Company and each of the Company's subsidiaries have been duly organized and are validly existing and in good standing under the laws of their respective jurisdictions of organization, are duly qualified to do business and are in good standing in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority necessary to own, lease and operate their respective properties and to conduct the businesses as described in the Offering Memorandum, except where the failure to be so qualified, be in good standing or have such power or authority could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Schedule 2 to this Agreement.

(g) *Activities of the Acquisition Sub.* The Acquisition Sub is a newly-formed corporation that does not conduct or engage in any business or hold or acquire any assets other than the undertaking of any actions required by law, regulation or order, including to maintain its existence, and as necessary to consummate the Merger.

(h) *Capitalization.* The Company has an authorized capitalization as set forth in each of the Time of Sale Information and the Offering Memorandum under the heading "Capitalization" (except for subsequent issuances, if any, pursuant to reservations, agreements or employee benefit plans referred to in each of the Time of Sale Information and the Offering Memorandum or pursuant to the exercise of convertible securities or options referred to in each of the Time of Sale Information and the Offering Memorandum); and all the issued and outstanding shares of capital stock or other equity interests of each subsidiary of the Company that are owned by the Company have been duly authorized and validly issued, are fully paid and non-assessable (except as otherwise described in each of the Time of Sale Information and the Offering Memorandum) and are owned directly or indirectly by the Company, free and clear of any lien, charge, encumbrance, security interest, restriction on voting or transfer or any other claim of any third party, except for those created pursuant to the Senior Credit Facility Documentation (as defined below) or any documentation governing outstanding indebtedness of

the Company or any of its subsidiaries that will be repaid or redeemed upon consummation of the Transactions.

(i) *Due Authorization.* The Acquisition Sub, the Company and each of the Guarantors have all power and authority to execute and deliver this Agreement, the Joinder Agreement (only with respect to the Company and the Guarantors), the Securities (only with respect to the Company and the Guarantors), the Indenture (including each Guarantee set forth therein) (only with respect to the Company and the Guarantors), the Exchange Securities (only with respect to the Company and the Guarantors), the Registration Rights Agreement (only with respect to the Company and the Guarantors), the Merger Agreement (only with respect to the Acquisition Sub and the Company) and the new senior secured credit agreement to be entered into in connection with the Transaction, together with any other documents, agreement or instruments delivered in connection therewith (the "Senior Credit Facility Documentation") (only with respect to the Company and the Guarantors to the extent a party thereto) (collectively, the "Transaction Documents"), as applicable, and to perform their respective obligations hereunder and thereunder, as applicable; and all action required to be taken for the due and proper authorization, execution and delivery of each of the Transaction Documents and the consummation of the transactions contemplated thereby, including the Transactions, have been duly or validly taken by the Acquisition Sub (to the extent it is a party thereto) or, will be duly or validly taken by the Company and the Guarantors at or prior to the Closing Date.

(j) *The Indenture*. The Indenture has been duly authorized by the Company and each of the Guarantors and, when duly executed and delivered in accordance with its terms by each of the parties thereto and upon the consummation of the Transactions, with the Company continuing as the surviving corporation, will constitute a valid and legally binding agreement of the Company and each of the Guarantors enforceable against the Company and each of the Guarantors in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles relating to enforceability (collectively, the "Enforceability Exceptions"); and on the Closing Date, the Indenture will conform in all material respects to the requirements of the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"), and the rules and regulations of the Commission applicable to an indenture that is qualified thereunder.

(k) *The Securities and the Guarantees*. The Securities have been duly authorized by the Company and, when duly executed, authenticated, issued and delivered as provided in the Indenture and paid for as provided herein and upon the consummation of the Transactions, will be duly and validly issued and outstanding and will constitute valid and binding obligations of the Company enforceable against the Company in accordance with their terms, subject to the Enforceability Exceptions; and the Guarantees have been duly authorized by each of the Guarantors and, when the Securities have been duly executed, authenticated, issued and delivered as provided in the Indenture and paid for as provided herein, will be valid and binding obligations of each of the Guarantors, enforceable against each of the Guarantors in accordance with their terms, subject to the Enforceability Exceptions, and will be entitled to the benefits of the Indenture.

(l) *The Exchange Securities*. On the Closing Date, the Exchange Securities (including the related guarantees) will have been duly authorized for issuance by the Company and each of the Guarantors and, when duly executed, authenticated, issued and delivered as contemplated by the Indenture and the Registration Rights Agreement, will be duly and validly issued and outstanding and will constitute valid and binding obligations of the Company, as issuer, and each of the Guarantors, as guarantor, enforceable against the Company and each of the Guarantors in accordance with their terms, subject to the Enforceability Exceptions, and will be entitled to the benefits of the Indenture.

(m) *Purchase Agreement, Joinder Agreement and Registration Rights Agreements.* This Agreement has been duly authorized, executed and delivered by the Acquisition Sub. At or prior to the Closing Date, the Joinder Agreement will have been duly authorized, executed and delivered by the Company and each of the Guarantors. At or prior to the Closing Date, the Registration Rights Agreement will have been duly authorized, executed and delivered by the Company and each of the Guarantors and, when duly executed and delivered in accordance with its terms by each of the parties thereto, will constitute a valid and binding agreement of the Company and each of the Guarantors enforceable against the Company and each of the Guarantors in accordance with its terms, subject to the Enforceability Exceptions, and except that rights to indemnity and contribution thereunder may be limited by applicable law and public policy.

(n) *Other Transaction Documents*. The Merger Agreement has been duly authorized, executed and delivered by the Acquisition Sub and the Company and constitutes a valid and binding agreement of the Acquisition Sub and the Company enforceable against each of the Acquisition Sub and the Company in accordance with its terms, subject to the Enforceability Exceptions. The Senior Credit Facility Documentation has been duly authorized by the Company and, to the extent a party thereto, the Company's subsidiaries and, when executed and delivered in accordance with its terms by each of the parties thereto, will constitute a valid and binding agreement of the Company and, to the extent a party thereto, the Company's subsidiaries, enforceable against the Company and, to the extent a party thereto, the Company's subsidiaries in accordance with its terms, subject to the Enforceability Exceptions.

(o) *Description of the Transaction Documents*. Each Transaction Document (other than the Merger Agreement) conforms in all material respects to the description thereof contained in each of the Time of Sale Information and the Offering Memorandum.

(p) *No Violation or Default.* None of the Acquisition Sub, the Company or any of the Company's subsidiaries is (i) in violation of its charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Acquisition Sub, the Company or any of the Company's subsidiaries is a party or by which the Acquisition Sub, the Company or any of the Company's subsidiaries is bound or to which any of the property or assets of the Acquisition Sub, the Company or any of the Company's subsidiaries is subject; or (iii) in violation of any applicable law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (ii) and (iii) above, for any such default or violation that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(q) *No Conflicts.* The execution, delivery and performance by the Acquisition Sub, the Company and each of the Guarantors of each of the Transaction Documents to which each is a party, the issuance and sale of the Securities (including the Guarantees) and compliance by the Acquisition Sub, the Company and each of the Guarantors with the terms thereof and the consummation of the transactions contemplated by the Transaction Documents will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or, except for those created under the Senior Credit Facility Documentation, result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Acquisition Sub, the Company or any of the Company's subsidiaries pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company, the Acquisition Sub or any of the Company's subsidiaries is a party or by which the Acquisition Sub, the Company or any of the Company's subsidiaries is bound or to which any of the property or assets of the Company or any of the Company's subsidiaries is subject, (ii) result in any violation of the provisions of the charter or by-laws or similar organizational documents of the Company, the Acquisition Sub or any of the Company's

subsidiaries or (iii) assuming the accuracy of, and the Initial Purchaser's compliance with, the representations, warranties and agreements of the Initial Purchaser herein, and the compliance by the holders of the Securities with the offering and transfer restrictions set forth in the Offering Memorandum, result in the violation of any applicable law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (i) and (iii) above, for any such conflict, breach, violation or default that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(r) *No Consents Required*. Assuming the accuracy of, and the Initial Purchaser's compliance with, the representations, warranties and agreements of the Initial Purchaser herein, and the compliance by the holders of the Securities with the offering and transfer restrictions set forth in the Offering Memorandum, no consent, approval, authorization, order, registration or qualification of or with any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by the Acquisition Sub, the Company and each of the Guarantors of each of the Transaction Documents to which each is a party, the issuance and sale of the Securities (including the Guarantees) and compliance by the Acquisition Sub, the Company and each of the Guarantors with the terms thereof and the consummation of the transactions contemplated by the Transaction Documents, including the Transactions, except for such consents, approvals, authorizations, orders and registrations or qualifications as have been obtained or as may be required (i) under the Securities Act and applicable state securities laws in connection with the purchase and resale of the Securities by the Initial Purchaser and (ii) with respect to the Exchange Securities (including the related guarantees), under the Securities Act, the Trust Indenture Act and applicable state securities laws as contemplated by the Registration Rights Agreement.

(s) *Legal Proceedings.* Except as described in each of the Time of Sale Information and the Offering Memorandum, there are no legal, governmental or regulatory investigations, actions, suits or proceedings pending, or to the best knowledge of the Acquisition Sub and the Company threatened, to which the Acquisition Sub, the Company or any of the Company's subsidiaries is or may be a party or to which any property of the Acquisition Sub, the Company or any of the Company's subsidiaries is or may be the subject that, individually or in the aggregate, if determined adversely to the Acquisition Sub, the Company or any of the Company's subsidiaries, could reasonably be expected to have a Material Adverse Effect; and no such investigations, actions, suits or proceedings are threatened or, to the best knowledge (without having undertaken any independent inquiry) of the Acquisition Sub, the Company and each of the Guarantors, contemplated by any governmental or regulatory authority or by others.

(t) *Independent Accountants.* Ernst & Young LLP, who have certified certain financial statements of the Company and the Company's subsidiaries, are independent public accountants with respect to the Company and the Company's subsidiaries within the applicable rules and regulations adopted by the Commission and the Public Accounting Oversight Board (United States) and as required by the Securities Act.

(u) *Title to Real and Personal Property.* The Company and the Company's subsidiaries have good and marketable title in fee simple to, or have valid rights to lease or otherwise use, all items of real and personal property that are material to the respective businesses of the Company and the Company's subsidiaries, in each case free and clear of all liens, encumbrances, claims and defects and imperfections of title except those that (i) are permitted under the Senior Credit Facility Documentation, (ii) do not materially and adversely affect the value of such property, (iii) do not materially interfere with the use made and proposed to be made of such property by the Acquisition Sub, the Company and the Company's subsidiaries or (iv) could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(v) *Title to Intellectual Property.* The Company and the Company's subsidiaries own, possess or license adequate rights to use any patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) reasonably necessary for the conduct of their respective businesses as described in each of the Time of Sale Information and the Offering Memorandum, except where the failure to own or possess such rights could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect; and the conduct of their respective businesses will not conflict in any material respect with any such rights of others, except which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect; and the Company and the Company's subsidiaries have not received any notice of any claim of infringement of or conflict with any such rights of others, which infringement or conflict, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect.

(w) *No Undisclosed Relationships.* No relationship, direct or indirect, exists between or among the Acquisition Sub, the Company or any of the Company's subsidiaries, on the one hand, and the directors, officers, stockholders or other affiliates of the Acquisition Sub, the Company or any of the Company's subsidiaries, on the other, that is required by the Securities Act to be described in a registration statement on Form S-1 to be filed with the Commission and that is not so described in each of the Time of Sale Information and the Offering Memorandum.

(x) *Investment Company Act.* None of the Acquisition Sub, the Company or any of the Company's subsidiaries is, and after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in each of the Time of Sale Information and the Offering Memorandum none of the Company or any of the Company's subsidiaries will be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder (collectively, the "Investment Company Act").

(y) *Taxes.* Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Acquisition Sub, the Company and the Company's subsidiaries have paid all federal, state, local and foreign taxes and filed all tax returns required to be paid or filed through the date hereof; and except as otherwise disclosed in each of the Time of Sale Information and the Offering Memorandum, there is no tax deficiency that has been, or could reasonably be expected to be, asserted against the Acquisition Sub, the Company or any of the Company's subsidiaries or any of their respective properties or assets.

(z) *Licenses and Permits.* The Acquisition Sub, the Company and the Company's subsidiaries possess any licenses, certificates, permits and other authorizations issued by, and have made any declarations and filings with, the appropriate federal, state, or foreign governmental or regulatory authorities that are reasonably necessary for the ownership or lease of their respective properties or the conduct of their respective businesses as described in each of the Time of Sale Information and the Offering Memorandum, except where the failure to possess or make the same could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and except as described in each of the Time of Sale Information and the Offering Memorandum, neither the Company nor any of the Company's subsidiaries has received notice of any revocation or modification of any such license, certificate, permit or authorization or has any reason to believe that any such license, certificate, permit or authorization will not be renewed in the ordinary course which, if the subject of an unfavorable decision, ruling, or finding would have a Material Adverse Effect.

(aa) *No Labor Disputes.* No labor disturbance by or dispute with employees of the Acquisition Sub, the Company or any of the Company's subsidiaries exists or, to the best knowledge (without having undertaken any independent inquiry) of the Acquisition Sub, the Company and each of the Guarantors, is contemplated or to the best knowledge of the Acquisition Sub, the Company and each

of the Guarantors, is threatened and none of the Acquisition Sub, the Company or any Guarantor is aware of any existing or imminent labor disturbance by, or dispute with, the employees of any of the Acquisition Sub's, the Company's or any of the Company's subsidiaries' principal suppliers, contractors or customers, except as would not have a Material Adverse Effect.

(bb) *Compliance With Environmental Laws.* (i) The Company and the Company's subsidiaries (x) are, and at all prior times were, in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, requirements, decisions and orders relating to the protection of human health or safety, the environment, natural resources, hazardous or toxic substances or wastes, pollutants or contaminants (collectively, "Environmental Laws"), (y) have received and are in compliance with all permits, licenses, certificates or other authorizations or approvals required of them under applicable Environmental Laws to conduct their respective businesses, and (z) have not received notice of any actual or potential liability under or relating to any Environmental Laws, including for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, and have no knowledge of any event or condition that would reasonably be expected to result in any such notice, and (ii) there are no costs or liabilities associated with Environmental Laws of or relating to the Company or the Company's subsidiaries, except in the case of each of (i) and (ii) above, for any such failure to comply, or failure to receive required permits, licenses or approvals, or cost or liability, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (iii) except as described in each of the Time of Sale Information and the Offering Memorandum, (x) there are no proceedings that are pending, or that are known to be contemplated, against the Company or any of the Company's subsidiaries under any Environmental Laws in which a governmental entity is also a party, other than such proceedings regarding which it is reasonably believed no monetary sanctions of $100,000 or more will be imposed, (y) the Company and the Company's subsidiaries are not aware of any issues regarding compliance with Environmental Laws, or liabilities or other obligations under Environmental Laws or concerning hazardous or toxic substances or wastes, pollutants or contaminants, that would have a Material Adverse Effect, and (z) none of the Company or the Company's subsidiaries anticipates material capital expenditures relating to any Environmental Laws.

(cc) *Compliance With ERISA.* (i) Each employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), for which the Company or any member of its "Controlled Group" (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the "Code")) would have any liability (each, a "Plan") has been maintained in compliance in all material respects with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Code; (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan excluding transactions effected pursuant to a statutory or administrative exemption; (iii) for each Plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, no "accumulated funding deficiency" as defined in Section 412 of the Code, whether or not waived, has occurred or is reasonably expected to occur; (iv) for each Plan that is subject to the funding rules of ERISA or the Code, the fair market value of the assets of each such Plan is not less than the present value of all benefits accrued under such Plan (determined based on those assumptions used to fund such Plan); (v) no "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably expected to occur; and (vi) neither the Company nor any member of the Controlled Group has incurred, nor reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation (the "PBGC"), in the ordinary course and without default) in respect of a Plan (including a "multiemployer plan", within the meaning of Section 4001(a)(3) of ERISA).

(dd) *Disclosure Controls*. To the Company's knowledge, the Company and the Company's subsidiaries, on a consolidated basis, maintain an effective system of "disclosure controls and procedures" (as defined in Rule 13a-15(e) of the Exchange Act) that is designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure. The Company and the Company's subsidiaries, on a consolidated basis, have carried out evaluations of the effectiveness of their disclosure controls and procedures as required by Rule 13a-15 of the Exchange Act.

(ee) *Accounting Controls*. To the Company's knowledge, the Company and the Company's subsidiaries, on a consolidated basis, maintain a system of "internal control over financial reporting" (as defined in Rule 13a-15(f) of the Exchange Act) that complies with the requirements of the Exchange Act and has been designed by, or under the supervision of, their respective principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. The Company and the Company's subsidiaries, on a consolidated basis, maintain internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(ff) *No Unlawful Payments.* None of the Acquisition Sub, the Company or any of the Company's subsidiaries nor, to the best knowledge of the Acquisition Sub, the Company and each of the Guarantors, any director, officer, agent, employee or other person associated with or acting on behalf of the Acquisition Sub, the Company or any of the Company's subsidiaries has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

(gg) *Insurance*. The Company and the Company's subsidiaries have insurance in amounts and against such losses and risks as such party believes to be are customary for companies engaged in similar business in similar industries and markets; and neither the Company nor any of the Company's subsidiaries has (i) received written notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance or (ii) any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be reasonably necessary to continue its business as described in each of the Time of Sale Information and the Offering Memorandum and at a cost that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(hh) *Compliance with Money Laundering Laws*. The operations of the Company and the Company's subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "Money Laundering Laws") and no action,

suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of the Company's subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(ii) *Solvency.* On and immediately after the Closing Date, the Company (on a consolidated basis after giving effect to the issuance of the Securities and the other Transactions as described in each of the Time of Sale Information and the Offering Memorandum) will be Solvent. As used in this paragraph, the term "Solvent" means, with respect to a particular date, that on such date (i) the present fair market value (or present fair saleable value) of the assets of the Company is not less than the total amount required to pay the liabilities of the Company on its total existing debts and liabilities (including contingent liabilities) as they become absolute and matured; (ii) the Company is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and commitments as they mature and become due in the normal course of business; (iii) assuming consummation of the issuance of the Securities as contemplated by this Agreement, the Time of Sale Information and the Offering Memorandum, the Company is not incurring debts or liabilities beyond its ability to pay as such debts and liabilities mature; (iv) the Company is not engaged in any business or transaction, and does not propose to engage in any business or transaction, for which its property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which the Company is engaged; and (v) the Company is not a defendant in any civil action that would result in a judgment that the Company is or would become unable to satisfy.

(jj) *No Restrictions on Subsidiaries*. No subsidiary of the Company is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or is subject, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's properties or assets to the Company or any other subsidiary of the Company.

(kk) *No Broker's Fees.* None of the Acquisition Sub, the Company or any of the Company's subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against any of them or the Initial Purchaser for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Securities.

(ll) *Rule 144A Eligibility.* On the Closing Date, the Securities will not be of the same class as securities listed on a national securities exchange registered under Section 6 of the Exchange Act or quoted in an automated inter-dealer quotation system; and each of the Time of Sale Information and the Offering Memorandum, as of its respective date, contains or will contain all the information that, if requested by a prospective purchaser of the Securities, would be required to be provided to such prospective purchaser pursuant to Rule 144A(d)(4) under the Securities Act.

(mm) *No Integration.* None of the Acquisition Sub, the Company or any of its affiliates (as defined in Rule 501(b) of Regulation D) has, directly or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act), that is or will be integrated with the sale of the Securities in a manner that would require registration of the Securities under the Securities Act.

(nn) *No General Solicitation or Directed Selling Efforts.* None of the Acquisition Sub, the Company or any of their respective affiliates (as defined in Rule 501(b) of Regulation D) or any other person acting on its or their behalf (other than the Initial Purchaser, as to which no representation or warranty is made) has (i) solicited offers for, or offered or sold, the Securities by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) of Regulation D or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act or (ii) with respect to those Securities offered or sold in reliance upon Regulation S under the Securities Act ("Regulation S"), engaged in any directed selling efforts within the meaning of Regulation S, and all such persons have complied with the offering restrictions requirement of Regulation S.

(oo) *Securities Law Exemptions.* Assuming the accuracy of the representations and warranties of the Initial Purchaser contained herein and its compliance with its agreements set forth herein, and the compliance by the holders of the Securities with the offering and transfer restrictions set forth in the Offering Memorandum, it is not necessary, in connection with the issuance and sale of the Securities to the Initial Purchaser and the offer, resale and delivery of the Securities by the Initial Purchaser in the manner contemplated by this Agreement, the Time of Sale Information and the Offering Memorandum, to register the Securities under the Securities Act or, until such time as the Exchange Securities are issued pursuant to an effective registration statement, to qualify the Indenture under the Trust Indenture Act of 1939, as amended ("the Trust Indenture Act"), and the rules and regulations of the Commission applicable to an indenture that is qualified thereunder.

(pp) *No Stabilization.* None of the Acquisition Sub, the Company or any of the Guarantors has taken, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Securities.

(qq) *Margin Rules*. Neither the issuance, sale and delivery of the Securities nor the application of the proceeds thereof by the Company as described in each of the Time of Sale Information and the Offering Memorandum will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(rr) *Forward-Looking Statements.* No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in any of the Time of Sale Information or the Offering Memorandum has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(ss) *Statistical and Market Data*. Nothing has come to the attention of the Company that has caused the Company to believe that the statistical and market-related data included or incorporated by reference in each of the Time of Sale Information and the Offering Memorandum is not based on or derived from sources that are reliable and accurate in all material respects.

(tt) *Sarbanes-Oxley Act*. To the Company's knowledge, there is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith, including Section 402 related to loans and Sections 302 and 906 related to certifications.

4. *Further Agreements of the Acquisition Sub, the Company and the Guarantors.* The Acquisition Sub, the Company and each of the Guarantors jointly and severally covenant and agree with each Initial Purchaser that:

(a) *Delivery of Copies.* The Acquisition Sub and the Company, as applicable, will deliver to the Initial Purchaser as many copies of the Preliminary Offering Memorandum, any other Time of Sale Information and the Offering Memorandum (including all amendments and supplements thereto) as the Initial Purchaser may reasonably request.

(b) *Offering Memorandum, Amendments or Supplements.* Before finalizing the Offering Memorandum or making or distributing any amendment or supplement to any of the Time of Sale Information or the Offering Memorandum or filing with the Commission any document that will be incorporated by reference therein, the Acquisition Sub and the Company, as applicable, will furnish to the Initial Purchaser and counsel for the Initial Purchaser a copy of the proposed Offering Memorandum or such proposed amendment or supplement or document to be incorporated by reference therein for review, and will not distribute any such proposed Offering Memorandum, amendment or supplement or file any such document with the Commission to which the Initial Purchaser reasonably objects.

(c) *Additional Written Communications.* Before using, authorizing, approving or referring to any written communication that constitutes an offer to sell or a solicitation of an offer to buy the Securities (an "Issuer Written Communication") (other than written communications that are listed on Annex A hereto and the Offering Memorandum), the Acquisition Sub, the Company, and the Guarantors, as applicable, will furnish to the Initial Purchaser and counsel for the Initial Purchaser a copy of such written communication for review and will not use, authorize, approve or refer to any such written communication to which the Initial Purchaser reasonably objects.

(d) *Notice to the Initial Purchaser.* The Acquisition Sub and the Company, as applicable, will advise the Initial Purchaser promptly and confirm such advice in writing, (i) of the issuance by any governmental or regulatory authority of any order preventing or suspending the use of any of the Time of Sale Information or the Offering Memorandum or the initiation or threatening of any proceeding for that purpose; (ii) of the occurrence of any event at any time prior to the completion of the initial offering of the Securities by the Initial Purchaser as notified by the Initial Purchaser to the Company as a result of which any of the Time of Sale Information or the Offering Memorandum as then amended or supplemented would include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing when such Time of Sale Information or the Offering Memorandum is delivered to a purchaser, not misleading; and (iii) of the receipt by the Acquisition Sub or the Company of any notice with respect to any suspension of the qualification of the Securities for offer and sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and the Acquisition Sub and the Company will use their reasonable best efforts to prevent the issuance of any such order preventing or suspending the use of any of the Time of Sale Information or the Offering Memorandum or suspending any such qualification of the Securities and, if any such order is issued, will obtain as soon as possible the withdrawal thereof.

(e) *Ongoing Compliance of the Offering Memorandum and Time of Sale Information.* (1) If at any time prior to the completion of the initial offering of the Securities by the Initial Purchaser as notified by the Initial Purchaser to the Company (i) any event shall occur or condition shall exist as a result of which the Offering Memorandum as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances existing when the Offering Memorandum is delivered to a purchaser, not misleading or (ii) it is necessary to amend or supplement the Offering Memorandum to comply with law, the Acquisition Sub and the Company will promptly notify the Initial Purchaser thereof and forthwith prepare and, subject to paragraph (b) above, furnish to the Initial Purchaser such amendments or supplements to the Offering Memorandum (or any document to be filed with the Commission and incorporated by reference therein) as may be necessary so that the statements in the Offering Memorandum as so amended or supplemented (or including such document to be incorporated by reference therein) will not, in the light of the circumstances existing when the Offering Memorandum is delivered to a purchaser, be misleading or so that the Offering Memorandum will comply with law and (2) if at any time prior to the Closing Date (i) any event shall occur or condition shall exist as a result of which any of the Time of Sale Information as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading or (ii) it is necessary to amend or supplement any of the Time of Sale Information so that any of the Time of Sale Information will not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, the Acquisition Sub and the Company will promptly notify the Initial Purchaser thereof and forthwith prepare and, subject to paragraph (b) above, furnish to the Initial Purchaser such amendments or supplements to any of the Time of Sale Information (or any document to be filed with the Commission and incorporated by reference therein) as may be necessary so that the statements in any of the Time of Sale Information

as so amended or supplemented will not, in light of the circumstances under which they were made, be misleading.

(f) *Blue Sky Compliance.* Each of the Acquisition Sub and the Company will cooperate with the Initial Purchaser and counsel for the Initial Purchaser to qualify or register (or to obtain exemptions from qualifying or registering) the Securities for offer and sale under the securities laws or Blue Sky laws of such jurisdictions as the Initial Purchaser shall reasonably request and will continue such qualifications, registrations and exemptions in effect so long as required for the offering and resale of the Securities; *provided* that none of the Acquisition Sub, the Company or any of the Guarantors shall be required to (i) qualify as a foreign corporation or other entity or as a dealer in securities in any such jurisdiction where it would not otherwise be required to so qualify, (ii) file any general consent to service of process in any such jurisdiction or (iii) subject itself to taxation in any such jurisdiction if it is not otherwise so subject.

(g) *Clear Market.* During the period from the date hereof through and including the date that is 90 days after the date hereof, the Acquisition Sub, the Company and each of the Guarantors will not, without the prior written consent of the Initial Purchaser, offer, sell, contract to sell or otherwise dispose of any debt securities issued or guaranteed by the Acquisition Sub, the Company or any of the Guarantors and having a tenor of more than one year.

(h) *Use of Proceeds.* The Company will apply the net proceeds from the sale of the Securities as described in each of the Time of Sale Information and the Offering Memorandum under the heading "Use of proceeds".

(i) *Supplying Information.* While the Securities remain outstanding and are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, the Acquisition Sub, the Company and each of the Guarantors will, during any period in which the Acquisition Sub or the Company is not subject to and in compliance with Section 13 or 15(d) of the Exchange Act, furnish to holders of the Securities and prospective purchasers of the Securities designated by such holders, upon the request of such holders or such prospective purchasers, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(j) *PORTAL and DTC.* The Acquisition Sub and the Company will assist the Initial Purchaser in arranging for the Securities to be designated Private Offerings, Resales and Trading through Automated Linkages ("PORTAL") Market securities in accordance with the rules and regulations adopted by the National Association of Securities Dealers, Inc. (the "NASD") relating to trading in the PORTAL Market and for the Securities to be eligible for clearance and settlement through The Depository Trust Company ("DTC").

(k) *No Resales by the Acquisition Sub and the Company.* The Acquisition Sub and the Company will not, and will not permit any of their respective affiliates (as defined in Rule 144 under the Securities Act) to, resell any of the Securities that have been reacquired by any of them, except for Securities purchased by the Acquisition Sub or the Company or any of their respective affiliates and resold in a transaction registered under the Securities Act.

(l) *No Integration.* None of the Acquisition Sub, the Company or any of their respective affiliates (as defined in Rule 501(b) of Regulation D) will, directly or through any agent, sell, offer for sale, solicit offers to buy or otherwise negotiate in respect of, any security (as defined in the Securities Act), that is or will be integrated with the sale of the Securities in a manner that would require registration of the Securities under the Securities Act.

(m) *No General Solicitation or Directed Selling Efforts.* None of the Acquisition Sub, the Company or any of the Company's affiliates (as defined in Rule 144 under the Securities Act) or any other person acting on its or their behalf (other than the Initial Purchaser, as to which no covenant is given) will (i) solicit offers for, or offer or sell, the Securities by means of any form of general solicitation or

general advertising within the meaning of Rule 502(c) of Regulation D or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act or (ii) engage in any directed selling efforts within the meaning of Regulation S, and all such persons will comply with the offering restrictions requirement of Regulation S.

(n) *No Stabilization.* None of the Acquisition Sub, the Company or any of the Guarantors will take, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Securities.

5. *Certain Agreements of the Initial Purchaser.* The Initial Purchaser hereby represents and agrees that it has not and will not use, authorize use of, refer to, or participate in the planning for use of, any written communication that constitutes an offer to sell or the solicitation of an offer to buy the Securities other than (i) a written communication that contains no "issuer information" (as defined in Rule 433(h)(2) under the Securities Act) that was not included (including through incorporation by reference) in the Preliminary Offering Memorandum, (ii) any written communication listed on Annex A or prepared pursuant to Section 4(c) above, (iii) any written communication prepared by such Initial Purchaser and approved by the Company in advance in writing or (iv) any written communication relating to or that contains the terms of the Securities and/or other information that was included (including through incorporation by reference) in the Preliminary Offering Memorandum.

6. *Conditions of Initial Purchaser's Obligations.* The obligation of each Initial Purchaser to purchase and pay for the Securities on the Closing Date as provided herein is subject to the performance by the Acquisition Sub, the Company and each of the Guarantors of their respective covenants and other obligations hereunder and to the following additional conditions:

(a) *Documentation*. On the Closing Date, (i) the Company shall have entered into the Senior Credit Facility Documentation on substantially the terms described in each of the Time of Sale Information, and the Offering Memorandum and otherwise in form and substance reasonably satisfactory to the Initial Purchaser, all conditions precedent to borrowings thereunder shall be satisfied or waived (with any such waiver reasonably satisfactory to the Initial Purchaser), no default shall exist thereunder and the Initial Purchaser shall have received conformed counterparts thereof and all other documents and agreements entered into and received thereunder in connection with the closing of the Senior Credit Facility.

(b) *Transactions*. On or prior to the Closing Date, each of the Transactions shall have been consummated in a manner consistent in all material respects with the description thereof in each of the Time of Sale Information and the Offering Memorandum (including, without limitation, the consummation of the Merger of the Acquisition Sub with and into the Company, with the Company continuing as the surviving corporation) (without giving effect to any waivers of material terms or conditions to which the Initial Purchaser has reasonably withheld its consent).

(c) *Representations and Warranties.* The representations and warranties of the Acquisition Sub, the Company and the Guarantors contained herein shall be true and correct on the date hereof and on and as of the Closing Date; and the statements of the Acquisition Sub, the Company, the Guarantors and their respective officers made in any certificates delivered pursuant to this Agreement shall be true and correct on and as of the Closing Date.

(d) *No Downgrade.* For the period from and after the signing of this Agreement and prior to the Closing Date, (i) no downgrading shall have occurred in the rating accorded the Securities or any other debt securities or preferred stock issued or guaranteed by the Acquisition Sub, the Company or any of the Company's subsidiaries by any "nationally recognized statistical rating organization", as such term is defined by the Commission for purposes of Rule 436(g)(2) under the Securities Act; and (ii) no such organization shall have publicly announced that it has under surveillance or review, or has changed its outlook with respect to, its rating of the Securities or of any other debt securities or preferred stock

issued or guaranteed by the Acquisition Sub, the Company or any of the Company's subsidiaries (other than an announcement with positive implications of a possible upgrading).

(e) *No Material Adverse Change.* For the period from and after the signing of this Agreement and prior to the Closing Date, no event or condition of a type described in Section 3(e) hereof shall have occurred or shall exist, which event or condition is not described in each of the Time of Sale Information (excluding any amendment or supplement thereto) and the Offering Memorandum (excluding any amendment or supplement thereto) the effect of which in the judgment of the Initial Purchaser, makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Securities on the terms and in the manner contemplated by this Agreement, the Time of Sale Information and the Offering Memorandum.

(f) *Officer's Certificates.* The Initial Purchaser shall have received on and as of the Closing Date a certificate of an executive officer of each of the Acquisition Sub, the Company and of each Guarantor who has specific knowledge of the Acquisition Sub's, the Company's or such Guarantor's financial matters and is satisfactory to the Initial Purchaser (i) confirming that such officer has carefully reviewed the Time of Sale Information and the Offering Memorandum and, to the best knowledge of such officer, the representations set forth in Sections 3(a) and 3(b) hereof are true and correct, (ii) confirming that the other representations and warranties of the Acquisition Sub, the Company and the Guarantors in this Agreement are true and correct and that the Acquisition Sub, the Company and the Guarantors have complied with all agreements and satisfied all conditions on their part to be performed or satisfied hereunder at or prior to the Closing Date and (iii) to the effect set forth in paragraphs (d) and (e) above. The Initial Purchaser shall have also received on and as of the Closing Date a certificate of the secretary or assistant secretary of each of the Acquisition Sub, the Company and each of the Guarantors, such certificate in form and substance reasonably satisfactory to the Initial Purchaser.

(g) *Comfort Letters.* On the date of this Agreement and on the Closing Date, Ernst & Young LLP shall have furnished to the Initial Purchaser, at the request of the Company, letters, dated the respective dates of delivery thereof and addressed to the Initial Purchaser, in form and substance reasonably satisfactory to the Initial Purchaser, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained or incorporated by reference in each of the Time of Sale Information and the Offering Memorandum; *provided* that the letter delivered on the Closing Date shall use a "cut-off" date no more than three business days prior to the Closing Date.

(h) *Management Comfort Letter*. On the date of this Agreement and on the Closing Date, William C. Hammett, Jr., the Senior Vice President and Chief Financial Officer of the Company, shall have furnished to the Initial Purchaser, at the request of the Acquisition Sub, the Company and the Guarantors, letters, dated the respective dates of delivery thereof and addressed to the Initial Purchaser, in form and substance reasonably satisfactory to the Initial Purchaser, to the effect set forth in Annex D hereto.

(i) *Opinion of Counsel for the Company and the Guarantors.* Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Company and the Guarantors, shall have furnished to the Initial Purchaser, at the request of the Company and the Guarantors, their written opinion, dated the Closing Date and addressed to the Initial Purchaser, in form and substance reasonably satisfactory to the Initial Purchaser, to the effect set forth in Annex E hereto.

(j) *Opinion of Local Counsel for the Acquisition Sub, the Company and the Guarantors.* Each of (i) Hallett and Perrin, P.C., Texas counsel for the Acquisition Sub, the Company and certain of the Guarantors, (ii) DLA Piper Rudnick Gray Cary US LLP, Florida counsel for certain of the Guarantors and (iii) Lewis, Rich & Fingersh, L.C., Missouri counsel for the Acquisition Sub and the Company, shall have furnished to the Initial Purchaser, at the request of the Acquisition Sub, the Company and

the Guarantors, their written opinion and, in the case of (i), their 10b-5 statement, dated the Closing Date and addressed to the Initial Purchaser, in form and substance reasonably satisfactory to the Initial Purchaser, in each case, to the effect set forth in Annex F hereto.

(k) *Opinion and 10b-5 Statement of Counsel for the Initial Purchaser.* The Initial Purchaser shall have received on and as of the Closing Date an opinion and 10b-5 statement of Simpson Thacher & Bartlett LLP, counsel for the Initial Purchaser, with respect to such matters as the Initial Purchaser may reasonably request, and such counsel shall have received such documents and information as they may reasonably request to enable them to pass upon such matters.

(l) *No Legal Impediment to Issuance.* No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any federal, state or foreign governmental or regulatory authority that would, as of the Closing Date, prevent the issuance or sale of the Securities or the issuance of the Guarantees; and no injunction or order of any federal, state or foreign court shall have been issued that would, as of the Closing Date, prevent the issuance or sale of the Securities or the issuance of the Guarantees.

(m) *Good Standing*. The Initial Purchaser shall have received on and as of the Closing Date satisfactory evidence of the good standing of the Acquisition Sub, the Company and the Guarantors in their respective jurisdictions of organization and their good standing in such other jurisdictions as the Initial Purchaser may reasonably request, in each case in writing or any standard form of telecommunication, from the appropriate governmental authorities of such jurisdictions.

(n) *Registration Rights Agreement.* The Initial Purchaser shall have received a counterpart of the Registration Rights Agreement that shall have been executed and delivered by a duly authorized officer of the Company and each of the Guarantors.

(o) *Joinder Agreement.* The Initial Purchaser shall have received a counterpart of the Joinder Agreement that shall have been executed and delivered by a duly authorized officer of each of the Company and the Guarantors.

(p) *Indenture.* The Indenture shall have been duly executed and delivered by a duly authorized officer of each of the Company, the Guarantors and the Trustee, and the certificates for the Securities shall have been duly executed and delivered by a duly authorized officer of each of the Company and the Guarantors and duly authenticated by the Trustee.

(q) *PORTAL and DTC.* The Securities shall have been approved by the NASD for trading in the PORTAL Market and shall be eligible for clearance and settlement through DTC.

(r) *Additional Documents*. On or prior to the Closing Date, the Acquisition Sub, the Company and the Guarantors shall have furnished to the Initial Purchaser such further certificates and documents as the Initial Purchaser may reasonably request. All opinions, letters, certificates and evidence mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Initial Purchaser.

(s) *Written Acknowledgment by The Bank of New York Trust Company, N.A.* The Initial Purchaser shall have received a written acknowledgment of The Bank of New York Trust Company, N.A., as successor to The Bank of New York, pursuant to Section 13.1 of the Convertible Subordinated Notes Indenture dated as of August 7, 2003 that the obligations under that indenture have been satisfied and discharged.

7. *Indemnification and Contribution.*

(a) *Indemnification of the Initial Purchaser.* The Acquisition Sub agrees, and upon and from the due authorization, execution and delivery of the Joinder Agreement, the Company and each of the

Guarantors jointly and severally agree, to indemnify and hold harmless each Initial Purchaser, its affiliates, directors and officers and each person, if any, who controls such Initial Purchaser within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are reasonably incurred), joint or several, that arise out of, or are based upon, any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Offering Memorandum, any of the other Time of Sale Information, Issuer Written Communication (if any) or the Offering Memorandum (or any amendment or supplement thereto) or any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case except insofar as such losses, claims, damages or liabilities arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to the Initial Purchaser furnished to the Acquisition Sub or the Company in writing by the Initial Purchaser expressly for use therein; *provided, however,* that the foregoing indemnity agreement with respect to the Preliminary Offering Memorandum shall not inure to the benefit of the Initial Purchaser or each affiliate, director and officer of the Initial Purchaser, where it shall have been determined by a court of competent jurisdiction by final and nonappealable judgment that (i) prior to the Time of Sale, the Company shall have notified the Initial Purchaser that the Preliminary Offering Memorandum contains an untrue statement of material fact or omits to state therein a material fact required to be stated therein in order to make the statements therein not misleading in light of the circumstances under which they were made, (ii) such untrue statement or omission of a material fact was corrected or supplemented, as the case may be, in an amendment or supplement to the Preliminary Offering Memorandum, including the Prospectus Supplement (the "Supplemental Information") and such Supplemental Information was provided to the Initial Purchaser reasonably in advance of the Time of Sale so that such Supplemental Information could have been provided to such person prior to the Time of Sale, (iii) the Initial Purchaser did not convey such Supplemental Information to such person at or prior to the Time of Sale of the Securities to such person, and (iv) such loss, claim, damage or liability would not have occurred had the Initial Purchaser conveyed the Supplemental Information to such person.

(b) *Indemnification of the Acquisition Sub, the Company and the Guarantors.* The Initial Purchaser agrees to indemnify and hold harmless (i) as of and from the date hereof, the Acquisition Sub; (ii) upon and from the execution and delivery of the Joinder Agreement, the Company and each of the Guarantors; and (iii) as of the applicable times, each of the respective directors and officers and each person, if any, who controls the Acquisition Sub within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, and upon the execution and delivery of the Joinder Agreement, each of the respective directors and officers and each person, if any, who controls the Company and the Guarantors within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, in each case to the same extent as the indemnity set forth in paragraph (a) above, but only with respect to any losses, claims, damages or liabilities that arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to the Initial Purchaser furnished to the Acquisition Sub or the Company in writing by the Initial Purchaser expressly for use in any of the Time of Sale Information or the Offering Memorandum (or any amendment or supplement thereto), it being understood and agreed that the only such information consists of the following: the third paragraph, the fourth and fifth sentences of the tenth paragraph and the twelve paragraph under the caption "Plan of distribution" set forth in the Preliminary Offering Memorandum and the Offering Memorandum.

(c) *Notice and Procedures.* If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any person in respect of which indemnification may be sought pursuant to either paragraph (a) or (b) above, such person

(the "Indemnified Person") shall promptly notify the person against whom such indemnification may be sought (the "Indemnifying Person") in writing; *provided* that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have under this Section 7 except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and *provided*, *further*, that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have to an Indemnified Person otherwise than under this Section 7. If any such proceeding shall be brought or asserted against an Indemnified Person and it shall have notified the Indemnifying Person thereof, the Indemnifying Person shall retain counsel reasonably satisfactory to the Indemnified Person (who shall not, without the consent of the Indemnified Person, be counsel to the Indemnifying Person) to represent the Indemnified Person and any others entitled to indemnification pursuant to this Section 7 that the Indemnifying Person may designate in such proceeding and shall pay the fees and expenses of such proceeding and shall pay the fees and expenses of such counsel related to such proceeding, as incurred. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary; (ii) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person; (iii) the Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the Indemnifying Person; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood and agreed that the Indemnifying Person shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be reimbursed as they are incurred. Any such separate firm for the Initial Purchaser, its affiliates, directors and officers and any control persons of the Initial Purchaser shall be designated in writing by J.P. Morgan Securities Inc. and any such separate firm for the Acquisition Sub, the Company, the Guarantors, their respective directors and officers and any control persons of the Acquisition Sub, the Company and the Guarantors shall be designated in writing by the Company. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify each Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an Indemnified Person shall have requested that an Indemnifying Person reimburse the Indemnified Person for fees and expenses of counsel as contemplated by this paragraph, the Indemnifying Person shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 60 days after receipt by the Indemnifying Person of such request; (ii) the Indemnifying Person shall not have reimbursed the Indemnified Person in accordance with such request prior to the date of such settlement and (iii) the Indemnified Person shall have given at least 30 days prior written notice of its intention to settle. No Indemnifying Person shall, without the written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnification is or could have been sought hereunder by such Indemnified Person, unless such settlement (x) includes an unconditional release of such Indemnified Person, in form and substance reasonably satisfactory to such Indemnified Person, from all liability on claims that are the subject matter of such proceeding and (y) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

(d) *Contribution.* If the indemnification provided for in paragraphs (a) and (b) above is unavailable to or insufficient to hold harmless an Indemnified Person in respect of any losses, claims,

damages or liabilities referred to therein, then each Indemnifying Person under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the aggregate amount paid or payable by such Indemnified Person, as incurred, as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Acquisition Sub, the Company and the Guarantors on the one hand and the Initial Purchaser on the other from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Acquisition Sub, the Company and the Guarantors on the one hand and the Initial Purchaser on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Acquisition Sub, the Company and the Guarantors on the one hand and the Initial Purchaser on the other shall be deemed to be in the same respective proportions as the net proceeds (before deducting expenses) received by the Acquisition Sub from the sale of the Securities pursuant to this Agreement and the total discounts and commissions received by the Initial Purchaser in connection therewith, as provided in this Agreement, bear to the aggregate initial offering price of the Securities. The relative fault of the Acquisition Sub, the Company and the Guarantors on the one hand and the Initial Purchaser on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Acquisition Sub, the Company or any Guarantor or by the Initial Purchaser and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) *Limitation on Liability.* The Acquisition Sub, the Company, the Guarantors and the Initial Purchaser agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by *pro rata* allocation or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph (d) above. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in paragraph (d) above shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such Indemnified Person in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 7, in no event shall an Initial Purchaser be required to contribute any amount in excess of the amount by which the total discounts and commissions received by such Initial Purchaser with respect to the offering of the Securities exceeds the amount of any damages that such Initial Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(f) *Non-Exclusive Remedies.* The remedies provided for in this Section 7 are not exclusive and shall not limit any rights or remedies that may otherwise be available to any Indemnified Person at law or in equity.

8. *Termination.* This Agreement may be terminated in the absolute discretion of the Initial Purchaser, by written notice to the Acquisition Sub, if after the execution and delivery of this Agreement and on or prior to the Closing Date (i) trading generally shall have been suspended or materially limited on the New York Stock Exchange or the over-the-counter market; (ii) trading of any securities issued or guaranteed by the Acquisition Sub, the Company or any of the Guarantors shall have been suspended on any exchange or in any over-the-counter market as applicable; (iii) a general moratorium on commercial banking activities shall have been declared by federal or New York State authorities; or (iv) there shall have occurred any outbreak or escalation of hostilities or any change in financial markets or any calamity or crisis, either within or outside the United States, that, in the judgment of the Initial Purchaser is material and adverse and makes it impracticable or inadvisable to

proceed with the offering, sale or delivery, of the Securities on the terms and in the manner contemplated by this Agreement, the Time of Sale Information and the Offering Memorandum or (v) the representation in Section 3(a) is incorrect in any respect.

9. *Payment of Expenses.* (a) Whether or not the transactions contemplated by this Agreement are consummated or this Agreement is terminated, the Acquisition Sub, the Company and each of the Guarantors jointly and severally agree to pay or cause to be paid all costs and expenses incident to the performance of their respective obligations hereunder, including without limitation, (i) the costs incident to the authorization, issuance, sale, preparation and delivery of the Securities and any taxes payable in that connection; (ii) the costs incident to the preparation and printing of the Preliminary Offering Memorandum, any other Time of Sale Information and the Offering Memorandum (including any amendment or supplement thereto) and the distribution thereof; (iii) the costs of reproducing and distributing each of the Transaction Documents; (iv) the fees and expenses of the Acquisition Sub's, the Company's and the Guarantors' counsel and independent accountants; (v) the fees and expenses incurred in connection with the registration or qualification and determination of eligibility for investment of the Securities under the laws of such jurisdictions as the Initial Purchaser may designate and the preparation, printing and distribution of a Blue Sky Memorandum (including the related fees and expenses of counsel for the Initial Purchaser); (vi) any fees charged by rating agencies for rating the Securities; (vii) the fees and expenses of the Trustee and any paying agent (including related fees and expenses of any counsel to such parties); (viii) all expenses and application fees incurred in connection with the application for the inclusion of the Securities on the PORTAL Market and the approval of the Securities for book-entry transfer by DTC; and (ix) all expenses incurred by the Acquisition Sub and the Company in connection with any "road show" presentation to potential investors; *provided* that the Initial Purchaser will pay 50% of the cost of any chartered aircraft jointly used in connection with such "road show" presentation.

(b) If (i) this Agreement is terminated pursuant to Section 8 (other than pursuant to clause (v) of Section 8 if the Acquisition Sub and the Initial Purchaser subsequently enter into another agreement for the Initial Purchaser to purchase the same or substantially similar securities of the Company), (ii) the Company for any reason fails to tender the Securities for delivery to the Initial Purchaser or (iii) the Initial Purchaser decline to purchase the Securities for any reason permitted under this Agreement, the Acquisition Sub, the Company and each of the Guarantors jointly and severally agree to reimburse the Initial Purchaser for all out-of-pocket costs and expenses (including the fees and expenses of their counsel) reasonably incurred by the Initial Purchaser in connection with this Agreement and the offering contemplated hereby.

10. *Persons Entitled to Benefit of Agreement.* This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and any controlling persons referred to herein, and the affiliates, officers and directors of each Initial Purchaser referred to in Section 7 hereof. Nothing in this Agreement is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein. No purchaser of Securities from the Initial Purchaser shall be deemed to be a successor merely by reason of such purchase.

11. *Survival.* The respective indemnities, rights of contribution, representations, warranties and agreements of the Acquisition Sub, the Company, the Guarantors and the Initial Purchaser contained in this Agreement or made by or on behalf of the Acquisition Sub, the Company, the Guarantors or the Initial Purchaser pursuant to this Agreement or any certificate delivered pursuant hereto shall survive the delivery of and payment for the Securities and shall remain in full force and effect, regardless of any termination of this Agreement or any investigation made by or on behalf of the Acquisition Sub, the Company, the Guarantors or the Initial Purchaser.

12. *Certain Defined Terms.* For purposes of this Agreement, (a) except where otherwise expressly provided, the term "affiliate" has the meaning set forth in Rule 405 under the Securities Act; (b) the term "business day" means any day other than a day on which banks are permitted or required to be closed in New York City; (c) the term "Exchange Act" means the Securities Exchange Act of 1934, as amended; (d) the term "subsidiary" has the meaning set forth in Rule 405 under the Securities Act; and (e) the term "written communication" has the meaning set forth in Rule 405 under the Securities Act.

13. *Miscellaneous.*

(a) *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted and confirmed by any standard form of telecommunication. Notices to the Initial Purchaser shall be given to the Initial Purchaser c/o J.P. Morgan Securities Inc., 270 Park Avenue, New York, New York 10017 (fax: (212) 270-1063); Attention: Timothy Collins. Notices to the Acquisition Sub shall be given to the Acquisition Sub c/o Wellspring Capital Management LLC, Lever House, 390 Park Avenue, New York, New York 10022-4608 (fax: (212) 318-9810); Attention: Greg S. Feldman, Managing Partner, with a copy to Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, New York 10036-6522 (fax: (212) 735-2000); Attention: William S. Rubenstein, Esq. and Skadden, Arps, Slate, Meagher & Flom LLP, One Rodney Square, P.O. Box 636, Wilmington, Delaware 19899-0636 (fax: (302) 651-3001; Attention: Allison Land Amorison, Esq. Notices to the Company or the Guarantors shall be given to them at Dave & Busters, Inc., 2481 Mañana Drive, Dallas, Texas 75220 (fax: (214) 357-1536); Attention: James W. Corley, with a copy to Hallett & Perrin, 2001 Bryan Street, Suite 3900, Dallas, Texas 75201; Attention: Bruce H. Hallett and Lance M. Hardenburg.

(b) *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(c) *Counterparts.* This Agreement may be signed in counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall be an original and all of which together shall constitute one and the same instrument.

(d) *Amendments or Waivers.* No amendment or waiver of any provision of this Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto.

(e) *Headings.* The headings herein are included for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

(Signature page follows)

If the foregoing is in accordance with your understanding, please indicate your acceptance of this Agreement by signing in the space provided below.

Very truly yours,

WS MIDWAY ACQUISITION SUB, INC.

By _____

Title:

Accepted: March 3, 2006

J.P. MORGAN SECURITIES INC.

By _____

Authorized Signatory

List of Guarantors

D&B Leasing, Inc.
D&B Realty Holding, Inc.
DANB Texas, Inc.
Dave & Buster's I, L.P.
Dave & Buster's Management Corporation, Inc.
Dave & Buster's of California, Inc.
Dave & Buster's of Colorado, Inc.
Dave & Buster's of Florida, Inc.
Dave & Buster's of Georgia, Inc.
Dave & Buster's of Hawaii, Inc.
Dave & Buster's of Illinois, Inc.
Dave & Buster's of Kansas, Inc.
Dave & Buster's of Maryland, Inc.
Dave & Buster's of Nebraska, Inc.
Dave & Buster's of New York, Inc.
Dave & Buster's of Pennsylvania, Inc.
Dave & Buster's of Pittsburgh, Inc.
Tango Acquisition, Inc.
Tango License Corporation
Tango of Arizona, Inc.
Tango of Arundel, Inc.
Tango of Farmingdale, Inc.
Tango of Franklin, Inc.
Tango of Houston, Inc.
Tango of Minnesota, Inc.
Tango of North Carolina, Inc.
Tango of Sugarloaf, Inc.
Tango of Tennessee, Inc.
Tango of Westbury, Inc.

List of Subsidiaries

6131646 Canada Inc.
D&B Leasing, Inc.
D&B Realty Holding, Inc.
DANB Texas, Inc.
Dave & Buster's I, L.P.
Dave & Buster's Management Corporation, Inc.
Dave & Buster's of California, Inc.
Dave & Buster's of Colorado, Inc.
Dave & Buster's of Florida, Inc.
Dave & Buster's of Georgia, Inc.
Dave & Buster's of Hawaii, Inc.
Dave & Buster's of Illinois, Inc.
Dave & Buster's of Kansas, Inc.
Dave & Buster's of Maryland, Inc.
Dave & Buster's of Nebraska, Inc.
Dave & Buster's of New York, Inc.
Dave & Buster's of Pennsylvania, Inc.
Dave & Buster's of Pittsburgh, Inc.
Sugarloaf Gwinnett Entertainment Company, L.P.
Tango Acquisition, Inc.
Tango License Corporation
Tango of Arizona, Inc.
Tango of Arundel, Inc.
Tango of Farmingdale, Inc.
Tango of Franklin, Inc.
Tango of Houston, Inc.
Tango of Minnesota, Inc.
Tango of North Carolina, Inc.
Tango of Sugarloaf, Inc.
Tango of Tennessee, Inc.
Tango of Westbury, Inc.

Additional Time of Sale Information

1. The "electronic road show" found at *www.netroadshow.com.*

2. The Prospectus Supplement, dated March 3, 2006.

3. Term sheet containing the terms of the securities in the form of Annex B.

Dave & Buster's, Inc.

Pricing Term Sheet

Annex B-1

Restrictions on Offers and Sales Outside the United States

In connection with offers and sales of Securities outside the United States:

(a) The Initial Purchaser acknowledges that the Securities have not been registered under the Securities Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except pursuant to an exemption from, or in transactions not subject to, the registration requirements of the Securities Act.

(b) The Initial Purchaser represents, warrants and agrees that:

(i) The Initial Purchaser has offered and sold the Securities, and will offer and sell the Securities, (A) as part of their distribution at any time and (B) otherwise until 40 days after the later of the commencement of the offering of the Securities and the Closing Date, only in accordance with Regulation S under the Securities Act ("Regulation S") or Rule 144A or any other available exemption from registration under the Securities Act.

(ii) None of the Initial Purchaser or any of its affiliates or any other person acting on its or their behalf has engaged or will engage in any directed selling efforts with respect to the Securities, and all such persons have complied and will comply with the offering restrictions requirement of Regulation S.

(iii) At or prior to the confirmation of sale of any Securities sold in reliance on Regulation S, the Initial Purchaser will have sent to each distributor, dealer or other person receiving a selling concession, fee or other remuneration that purchase Securities from it during the distribution compliance period a confirmation or notice to substantially the following effect:

> "The Securities covered hereby have not been registered under the U.S. Securities Act of 1933, as amended (the "Securities Act"), and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (i) as part of their distribution at any time or (ii) otherwise until 40 days after the later of the commencement of the offering of the Securities and the date of original issuance of the Securities, except in accordance with Regulation S or Rule 144A or any other available exemption from registration under the Securities Act. Terms used above have the meanings given to them by Regulation S."

(iv) The Initial Purchaser has not and will not enter into any contractual arrangement with any distributor with respect to the distribution of the Securities, except with its affiliates or with the prior written consent of the Company.

Terms used in paragraph (a) and this paragraph (b) and not otherwise defined in this Agreement have the meanings given to them by Regulation S.

(c) The Initial Purchaser represents, warrants and agrees that:

(i) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of Section 21 of the United Kingdom Financial Services and Markets Act 2000 (the "FSMA")) received by it in connection with the issue or sale of any Securities in circumstances in which Section 21(1) of the FSMA does not apply to the Acquisition Sub, the Company or the Guarantors; and

(ii) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Securities in, from or otherwise involving the United Kingdom.

(d) The Initial Purchaser acknowledges that no action has been or will be taken by the Acquisition Sub or the Company that would permit a public offering of the Securities, or possession or distribution of any of the Time of Sale Information, the Offering Memorandum or any other offering or publicity material relating to the Securities, in any country or jurisdiction where action for that purpose is required.

[Form of Management Comfort Letter]

[Company Letterhead]

March 3, 2006

J.P. Morgan Securities Inc.
(As initial purchasers of $175,000,000
$11^{1}/_{4}$% Senior Notes, due 2014, of Dave & Buster's, Inc.) c/o J.P. Morgan Securities, Inc.
270 Park Avenue, Floor 5
New York, New York 10017

Ladies and Gentlemen:

I, William C. Hammett, Jr., Senior Vice President and Chief Financial Officer of Dave & Buster's, Inc. (the "Company"), hereby certify that I have responsibility for financial and accounting matters with respect to the Company and have read and am familiar with the consolidated financial statements of the Company and its subsidiaries as of February 1, 2004 and January 30, 2005 and for the three fiscal years ended January 30, 2005 and as of October 30, 2005 and the thirty-nine weeks ended October 31, 2004 and October 30, 2005, and I am familiar with the Company's accounting records.

In connection with the preliminary offering memorandum dated February 17, 2006 and the final offering memorandum dated March 3, 2006 (collectively, the "Offering Memorandum") relating to the offering of $175,000,000 of $11^{1}/_{4}$% Senior Notes, due 2014 (the "Senior Notes") by the Company (the "Offering Memorandum"), I hereby further certify that:

1. To my knowledge, with respect to the period from October 31, 2005 to January 29, 2006, except in all instances for changes, increases or decreases that the Offering Memorandum discloses have occurred or are contemplated to occur:

   (a) at January 29, 2006, there was no material change in the capital stock, increase in short or long-term debt or any decreases in consolidated net current assets or stockholders' equity of the Company as compared with amounts shown on the October 30, 2005 unaudited condensed consolidated balance sheet; and

   (b) we are currently in the process of finalizing our consolidated financial results for the fiscal year ended January 29, 2006, and, therefore, final results are not yet available. In addition, EBITDA and other financial measures for the fiscal year ended January 29, 2006 have not been finalized as of this date. However, we expect that (i) for the fiscal year ended January 29, 2006, there will be no material decreases in consolidated net revenues, and (ii) our Adjusted EBITDA for fiscal year 2005 will not be materially different than comparable amounts for the twelve months ended October 30, 2005.

2. For purposes of this letter, I have also read the items identified by you on the attached copy of selected pages of the Offering Memorandum and have performed the following procedures, which were applied as indicated with respect to the symbols explained below:

Procedure	Description
(i)	Compared the dollar amount or percentage shown to a schedule prepared by the Company's accounting personnel and found them to be in agreement. In addition I proved the arithmetical accuracy, as applicable, of the total dollar amount or percentage using data contained in the schedule, attached hereto in Annex A.
(ii)	Compared the dollar amount to analytical information prepared by the Company's finance personnel estimating the impact of 2004 severe weather on revenue, attached hereto in Annex B.
(iii)	Compared the dollar amounts to forecasts prepared by the Company's finance personnel estimating consolidated revenue, expense and capital expenditure amounts for fiscal 2005 and 2006, attached hereto as Annex C.
(iv)	Compared the dollar amounts to analytical schedules summarizing fixed asset additions, noting them to be in agreement, attached hereto in Annex D. Noted that analytical information reconciled to appropriate amount appearing in the Company's audited consolidated financial statements.

DAVE & BUSTER'S, INC.

Name: William C. Hammett, Jr.
Title: Senior Vice President and Chief Financial Officer

[Form of Opinion of Counsel for the Company]

[Form of Opinions of Florida, Missouri and Texas Local Counsel]

[Form of Joinder Agreement]

March 8, 2006

J.P. Morgan Securities Inc.
270 Park Avenue
New York, New York 10017

Ladies and Gentlemen:

Reference is made to the Purchase Agreement (the "*Purchase Agreement*") dated March 3, 2006, initially between WS Midway Acquisition Sub, Inc., a Missouri corporation (the "*Acquisition Sub*"), to be merged with and into Dave & Buster's, Inc., a Missouri corporation (the "*Company*"), and you, as initial purchaser (the "*Initial Purchaser*"), concerning the purchase of the Securities (as defined in the Purchase Agreement) from the Company by the Initial Purchaser. Capitalized terms used herein but not defined herein shall have the meanings assigned to such terms in the Purchase Agreement.

The Company and each of the Guarantors listed on Schedule 2 to the Purchase Agreement, attached hereto, hereto agree that this letter agreement is being executed and delivered in connection with the issue and sale of the Securities pursuant to the Purchase Agreement and to induce the Initial Purchaser to purchase the Securities thereunder and is being executed concurrently with the consummation of the Acquisition.

1. *Joinder.* Each of the parties hereto hereby agrees to be bound by the terms, conditions and other provisions of the Purchase Agreement with all attendant rights, duties and obligations stated therein, with the same force and effect as if originally named, in the case of the Company, as the issuer, and in the case of a Guarantor, as a Guarantor therein and as if such party executed the Purchase Agreement on the date thereof.

2. *Representations, Warranties and Agreements of each of the Company and the Guarantors.* Each of the Company and the Guarantors represents and warrants to, and agrees with, the Initial Purchaser on and as of the date hereof that:

(a) the Company or such Guarantor, as the case may be, has the corporate power to execute and deliver this letter agreement and all corporate action required to be taken by each of them for the due and proper authorization, execution, delivery and performance of this letter agreement and the consummation of the transactions contemplated hereby has been duly and validly taken; this letter agreement has been duly authorized, executed and delivered by such Company or Guarantor, as the case may be.

(b) the representations, warranties and agreements of the Company or such Guarantor, as the case may be, set forth in the Purchase Agreement are true and correct on and as of the date hereof.

3. *GOVERNING LAW.* THIS LETTER AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

4. *Counterparts.* This letter agreement may be signed in counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall be an original and all of which together shall constitute one and the same instrument.

5. *Amendments.* No amendment or waiver of any provision of this Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto.

6. *Headings.* The headings herein are included for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

(Signature pages follow)

If the foregoing is in accordance with your understanding of our agreement, please indicate your acceptance of this letter agreement by signing in the space provided below, whereupon this letter agreement will become a binding agreement between the Company, the Guarantors party hereto and the Initial Purchaser in accordance with its terms.

DAVE & BUSTER'S, INC.

By _____

Title:

D&B LEASING, INC.
D&B REALTY HOLDING, INC.
DANB TEXAS, INC.
DAVE & BUSTER'S I, L.P.
DAVE & BUSTER'S MANAGEMENT CORPORATION, INC.
DAVE & BUSTER'S OF CALIFORNIA, INC.
DAVE & BUSTER'S OF COLORADO, INC.
DAVE & BUSTER'S OF FLORIDA, INC.
DAVE & BUSTER'S OF GEORGIA, INC.
DAVE & BUSTER'S OF HAWAII, INC.
DAVE & BUSTER'S OF ILLINOIS, INC.
DAVE & BUSTER'S OF KANSAS, INC.
DAVE & BUSTER'S OF MARYLAND, INC.
DAVE & BUSTER'S OF NEBRASKA, INC.
DAVE & BUSTER'S OF NEW YORK, INC.
DAVE & BUSTER'S OF PENNSYLVANIA, INC.
DAVE & BUSTER'S OF PITTSBURGH, INC.
TANGO ACQUISITION, INC.
TANGO LICENSE CORPORATION
TANGO OF ARIZONA, INC.
TANGO OF ARUNDEL, INC.
TANGO OF FARMINGDALE, INC.
TANGO OF FRANKLIN, INC.
TANGO OF HOUSTON, INC.
TANGO OF MINNESOTA, INC.
TANGO OF NORTH CAROLINA, INC.
TANGO OF SUGARLOAF, INC.
TANGO OF TENNESSEE, INC.
TANGO OF WESTBURY, INC.

By _____

Title:

[Form of Registration Rights Agreement]

This REGISTRATION RIGHTS AGREEMENT dated March 8, 2006 (the "*Agreement*") is entered into by and among Dave & Buster's Inc., a Missouri corporation (the "*Company*"), the guarantors listed in Schedule 1 hereto (the "*Guarantors*"), and J.P. Morgan Securities Inc. ("*JPMorgan*"), as the initial purchaser (the "*Initial Purchaser*").

The Company, the Guarantors and the Initial Purchaser are parties to the Purchase Agreement dated March 3, 2006 (the "*Purchase Agreement*"), which provides for the sale by the Company to the Initial Purchaser of $175,000,000 aggregate principal amount of the Company's $11^{1}/_{4}$% Senior Notes due 2014 (the "*Securities*") which will be guaranteed on an unsecured basis by each of the Guarantors. As an inducement to the Initial Purchaser to enter into the Purchase Agreement, the Company and the Guarantors have agreed to provide to the Initial Purchaser and its direct and indirect transferees the registration rights set forth in this Agreement. The execution and delivery of this Agreement is a condition to the closing under the Purchase Agreement.

In consideration of the foregoing, the parties hereto agree as follows:

1. *Definitions.* As used in this Agreement, the following terms shall have the following meanings:

"*Additional Guarantor*" shall mean any subsidiary of the Company that executes a Subsidiary Guarantee under the Indenture after the date of this Agreement.

"*Base Interest*" shall mean the interest that would otherwise accrue on the securities under the terms thereof and the Indenture, without giving effect to the provisions of this Registration Rights Agreement.

"*Business Day*" shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

"*Company*" shall have the meaning set forth in the preamble and shall also include the Company's successors.

"*Exchange Act*" shall mean the Securities Exchange Act of 1934, as amended from time to time.

"*Exchange Dates*" shall have the meaning set forth in Section 2(a)(ii) hereof.

"*Exchange Offer*" shall mean the exchange offer by the Company and the Guarantors of Exchange Securities for Registrable Securities pursuant to Section 2(a) hereof.

"*Exchange Offer Registration*" shall mean a registration under the Securities Act effected pursuant to Section 2(a) hereof.

"*Exchange Offer Registration Statement*" shall mean an exchange offer registration statement on Form S-4 (or, if applicable, on another appropriate form) and all amendments and supplements to such registration statement, in each case including the Prospectus contained therein or deemed a part thereof, all exhibits thereto and any document incorporated by reference therein.

"*Exchange Securities*" shall mean senior notes issued by the Company and guaranteed by the Guarantors under the Indenture containing terms identical to the Securities (except that the Exchange Securities will not be subject to restrictions on transfer or to any increase in annual interest rate for failure to comply with this Agreement) and to be offered to Holders of Securities in exchange for Securities pursuant to the Exchange Offer.

"*Free Writing Prospectus*" means each free writing prospectus (as defined in Rule 405 under the Securities Act) prepared by or on behalf of the Company or used or referred to by the Company in connection with the sale of the Securities.

"*Guarantors*" shall have the meaning set forth in the preamble and shall also include any Guarantor's successors and any Additional Guarantors.

"*Holders*" shall mean the Initial Purchaser, for so long as its owns any Registrable Securities, and each of its successors, assigns and direct and indirect transferees who become owners of Registrable Securities under the Indenture; provided that for purposes of Sections 4 and 5 of this Agreement, the term "Holders" shall include Participating Broker-Dealers.

"*Indemnified Person*" shall have the meaning set forth in Section 5(c) hereof.

"*Indemnifying Person*" shall have the meaning set forth in Section 5(c) hereof.

"*Indenture*" shall mean the Indenture relating to the Securities dated as of March 8, 2006 among the Company, the Guarantors and The Bank of New York Trust Company, N.A., as trustee, and as the same may be amended from time to time in accordance with the terms thereof.

"*Initial Purchaser*" shall have the meaning set forth in the preamble.

"*Inspector*" shall have the meaning set forth in Section 3(a)(xiii) hereof.

"*Issuer Information*" shall have the meaning set forth in Section 5(a) hereof.

"*JPMorgan*" shall have the meaning set forth in the preamble.

"*Majority Holders*" shall mean the Holders of a majority of the aggregate principal amount of the outstanding Registrable Securities; provided that whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, any Registrable Securities owned directly or indirectly by the Company or any of its affiliates shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage or amount; and provided, further, that if the Company shall issue any additional Securities under the Indenture prior to consummation of the Exchange Offer or, if applicable, the effectiveness of any Shelf Registration Statement, such additional Securities and the Registrable Securities to which this Agreement relates shall be treated together as one class for purposes of determining whether the consent or approval of Holders of a specified percentage of Registrable Securities has been obtained.

"*Participating Broker-Dealers*" shall have the meaning set forth in Section 4(a) hereof.

"*Person*" shall mean an individual, partnership, limited liability company, corporation, trust or unincorporated organization, or a government or agency or political subdivision thereof.

"*Prospectus*" shall mean the prospectus included in a Registration Statement, including any preliminary prospectus, and any such prospectus as amended or supplemented by any prospectus supplement, including a prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by a Shelf Registration Statement, and by all other amendments and supplements to such prospectus, and in each case including any document incorporated by reference therein.

"*Purchase Agreement*" shall have the meaning set forth in the preamble.

"*Registrable Securities*" shall mean the Securities; provided that the Securities shall cease to be Registrable Securities (i) when a Registration Statement with respect to such Securities has become effective under the Securities Act and such Securities have been exchanged or disposed of pursuant to such Registration Statement, (ii) when such Securities are eligible to be sold pursuant to Rule 144(k) (or any similar provision then in force, but not Rule 144A) under the Securities Act, (iii) such Security

is sold pursuant to Rule 144 under circumstances in which any legend borne by such Security relating to restrictions on transferability thereof, under the Securities Act or otherwise, is removed by the Company or (iv) when such Securities cease to be outstanding.

"*Registration Expenses*" shall mean any and all expenses incident to performance of or compliance by the Company and the Guarantors with this Agreement, including without limitation: (i) all SEC, stock exchange or National Association of Securities Dealers, Inc. registration and filing fees, (ii) all fees and expenses incurred in connection with compliance with state securities or blue sky laws (including reasonable fees and disbursements of not more than one counsel for any Underwriters or Holders (whose counsel shall be selected by the Holders of a majority in aggregate principal amount of Registrable Securities to be registered in the applicable Registration Statement) in connection with blue sky qualification of any Exchange Securities or Registrable Securities), (iii) all expenses of any Persons in preparing or assisting in preparing, word processing, printing and distributing any Registration Statement, any Prospectus and any amendments or supplements thereto, any underwriting agreements, securities sales agreements or other similar agreements and any other documents relating to the performance of and compliance with this Agreement, (iv) all rating agency fees, (v) all fees and disbursements relating to the qualification of the Indenture under applicable securities laws, (vi) the fees and disbursements of the Trustee and its counsel, (vii) the fees and disbursements of counsel for the Company and the Guarantors and, in the case of a Shelf Registration Statement, the fees and disbursements of one counsel for the Holders (which counsel shall be selected by the Majority Holders and which counsel may also be counsel for the Initial Purchaser) and (viii) the fees and disbursements of the independent public accountants of the Company and the Guarantors, including the expenses of any special audits or "comfort" letters required by or incident to the performance of and compliance with this Agreement, but excluding any and all fees and expenses of advisors or counsel to the Underwriters (other than fees and expenses set forth in clause (ii) above) or the Holders and underwriting discounts and commissions, brokerage commissions and transfer taxes, if any, relating to the sale or disposition of Registrable Securities by a Holder pursuant to any Registration Statement.

"*Registration Statement*" shall mean any registration statement of the Company and the Guarantors that covers any of the Exchange Securities or Registrable Securities pursuant to the provisions of this Agreement and all amendments and supplements to any such registration statement, including post-effective amendments, in each case including the Prospectus contained therein or deemed a part thereof, all exhibits thereto and any document incorporated by reference therein.

"*SEC*" shall mean the United States Securities and Exchange Commission.

"*Securities*" shall have the meaning set forth in the preamble.

"*Securities Act*" shall mean the Securities Act of 1933, as amended from time to time.

"*Shelf Additional Interest Date*" shall have the meaning set forth in Section 2(d) hereof.

"*Shelf Effectiveness Period*" shall have the meaning set forth in Section 2(b) hereof.

"*Shelf Registration*" shall mean a registration effected pursuant to Section 2(b) hereof.

"*Shelf Registration Statement*" shall mean a "shelf" registration statement of the Company and the Guarantors that covers all or a portion of the Registrable Securities (but no other securities unless approved by a majority of the Holders whose Registrable Securities are to be covered by such Shelf Registration Statement) on an appropriate form under Rule 415 under the Securities Act, or any similar rule that may be adopted by the SEC, and all amendments and supplements to such registration statement, including post-effective amendments, in each case including the Prospectus contained therein or deemed a part thereof, all exhibits thereto and any document incorporated by reference therein.

"*Shelf Request*" shall have the meaning set forth in Section 2(b) hereof.

"*Subsidiary Guarantee*" shall mean the guarantees of the Securities and Exchange Securities by the Guarantors under the Indenture.

"*Staff*" shall mean the staff of the SEC.

"*Target Registration Date*" shall have the meaning set forth in Section 2(d) hereof.

"*Trust Indenture Act*" shall mean the Trust Indenture Act of 1939, as amended from time to time.

"*Trustee*" shall mean the trustee with respect to the Securities under the Indenture.

"*Underwriter*" shall have the meaning set forth in Section 3(e) hereof.

"*Underwritten Offering*" shall mean an offering in which Registrable Securities are sold to one or more Underwriters for reoffering to the public.

2. *Registration Under the Securities Act.* (a) To the extent not prohibited by any applicable law or applicable interpretations of the Staff, the Company and the Guarantors shall use their reasonable best efforts to (i) cause to be filed with the SEC an Exchange Offer Registration Statement covering an offer to the Holders to exchange all the Registrable Securities for Exchange Securities, (ii) cause such Registration Statement to become effective not later than 180 days after the date hereof and (iii) to the extent necessary to ensure that the Prospectus contained in any Exchange Offer Registration Statement is available for sales of Registrable Securities by any Participating Broker-Dealers, have such Registration Statement remain effective until 180 days after the last Exchange Date for use by one or more Participating Broker-Dealers or such shorter period as will terminate when all Registrable Securities covered by such Registration Statement have been sold pursuant thereto. The Company and the Guarantors shall commence the Exchange Offer promptly after the Exchange Offer Registration Statement is declared effective by the SEC and use their reasonable best efforts to complete the Exchange Offer not later than 30 days after such effective date.

The Company and the Guarantors shall commence the Exchange Offer by causing the mailing of the related Prospectus, appropriate letters of transmittal and other accompanying documents to each Holder stating, in addition to such other disclosures as are required by applicable law, substantially the following:

(i) that the Exchange Offer is being made pursuant to this Agreement and that all Registrable Securities validly tendered and not properly withdrawn will be accepted for exchange;

(ii) the dates of acceptance for exchange (which shall be a period of at least 20 Business Days from the date such notice is mailed) (the "*Exchange Dates*");

(iii) that any Registrable Security not tendered will remain outstanding and continue to accrue interest but will not retain any rights under this Agreement, except as otherwise specified herein;

(iv) that any Holder electing to have a Registrable Security exchanged pursuant to the Exchange Offer will be required to (A) surrender such Registrable Security, together with the appropriate letters of transmittal, to the institution and at the address (located in the Borough of Manhattan, The City of New York) and in the manner specified in the notice, or (B) effect such exchange otherwise in compliance with the applicable procedures of the depositary for such Registrable Security, in each case prior to the close of business on the last Exchange Date; and

(v) that any Holder will be entitled to withdraw its election, not later than the close of business on the last Exchange Date, by (A) sending to the institution and at the address (located in the Borough of Manhattan, The City of New York) specified in the notice, a telegram, telex, facsimile transmission or letter setting forth the name of such Holder, the principal amount of Registrable Securities delivered for exchange and a statement that such Holder is withdrawing its

election to have such Securities exchanged or (B) effecting such withdrawal in compliance with the applicable procedures of the depositary for the Registrable Securities.

As a condition to participating in the Exchange Offer, each Holder will be required to represent in writing to the Company and the Guarantors prior to the consummation of the Exchange Offer (which representation may be contained in the letter of transmittal contemplated by the Exchange Offer Registration Statement) that (i) any Exchange Securities to be received by it will be acquired in the ordinary course of its business, (ii) at the time of the commencement of the Exchange Offer it is not engaged in, and does not intend to engage in, and has no arrangement or understanding with any Person to participate in, the distribution (within the meaning of the Securities Act) of the Exchange Securities in violation of the provisions of the Securities Act, (iii) it is not an "affiliate" (within the meaning of Rule 405 under the Securities Act) of the Company or any Guarantor and (iv) if such Holder is a broker-dealer that will receive Exchange Securities for its own account in exchange for Registrable Securities that were acquired as a result of market-making or other trading activities, then such Holder will comply with the applicable provisions of the Securities Act (including, but not limited to, the prospectus delivery requirements thereunder) in connection with any resale of such Exchange Securities.

As soon as practicable after the last Exchange Date, the Company and the Guarantors shall use their reasonable best efforts to:

(i) accept for exchange Registrable Securities or portions thereof validly tendered and not properly withdrawn pursuant to the Exchange Offer; and

(ii) deliver, or cause to be delivered, to the Trustee for cancellation all Registrable Securities or portions thereof so accepted for exchange by the Company and issue, and cause the Trustee to promptly authenticate and deliver to each Holder, Exchange Securities in principal amount equal to the principal amount of the Registrable Securities validly tendered by such Holder and accepted for exchange pursuant to the Exchange Offer.

The Company and the Guarantors shall use their reasonable best efforts to complete the Exchange Offer as provided above and shall comply with the applicable requirements of the Securities Act, the Exchange Act and other applicable laws and regulations in connection with the Exchange Offer. The Exchange Offer shall not be subject to any conditions, other than that the Exchange Offer does not violate any applicable law or applicable interpretations of the Staff.

(b) In the event that (i) the Company and the Guarantors determine that the Exchange Offer Registration provided for in Section 2(a) above is not available or may not be completed as soon as practicable after the last Exchange Date, in each case because it would violate any applicable law or applicable interpretations of the Staff, (ii) the Exchange Offer is not for any other reason completed by October 4, 2006 or (iii) upon receipt of a written request (a "*Shelf Request*") from the Initial Purchaser representing that it holds Registrable Securities that are or were ineligible to be exchanged in the Exchange Offer, the Company and the Guarantors shall, in lieu of (or, in the case of clause (ii) or (iii), in addition to) conducting the Exchange Offer as contemplated by Section 2(a), use their reasonable best efforts to cause to be filed as soon as practicable after such determination, date or Shelf Request, as the case may be, a Shelf Registration Statement providing for the sale of all the Registrable Securities by the Holders thereof and to have such Shelf Registration Statement become effective. As soon as practicable after the obligation to file a Shelf Registration Statement arise pursuant to this Section 2(b), the Company shall give notice (a "Shelf Notice") of such fact to the Holders and to the Initial Purchaser, if applicable.

In the event that the Company and the Guarantors are required to file a Shelf Registration Statement pursuant to clauses (ii) or (iii) of the preceding sentence, the Company and the Guarantors shall use their reasonable best efforts to file and have become effective both an Exchange Offer

Registration Statement pursuant to Section 2(a) with respect to all Registrable Securities and a Shelf Registration Statement (which may be a combined Registration Statement with the Exchange Offer Registration Statement) with respect to offers and sales of Registrable Securities held by the Initial Purchaser after completion of the Exchange Offer.

The Company and the Guarantors agree to use their reasonable best efforts to keep the Shelf Registration Statement continuously effective until the expiration of the time period referred to in Rule 144(k) (or any similar rule then in force, but not Rule 144A) under the Securities Act with respect to the Registrable Securities or such shorter period that will terminate when all the Registrable Securities covered by the Shelf Registration Statement have been sold pursuant to the Shelf Registration Statement (the "*Shelf Effectiveness Period*"). The Company and the Guarantors further agree to supplement or amend the Shelf Registration Statement and the related Prospectus if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement or by the Securities Act or by any other rules and regulations thereunder or if reasonably requested by a Holder of Registrable Securities with respect to information relating to such Holder, and to use their reasonable best efforts to cause any such amendment to become effective, if required, and such Shelf Registration Statement and Prospectus to become usable as soon as thereafter practicable. The Company and the Guarantors agree to furnish to the Holders of Registrable Securities copies of any such supplement or amendment as promptly as practicable after its being used or filed with the SEC.

(c) The Company and the Guarantors shall pay all Registration Expenses in connection with any registration pursuant to Section 2(a) or Section 2(b) hereof. Each Holder shall pay all underwriting discounts and commissions, brokerage commissions and transfer taxes, if any, relating to the sale or disposition of such Holder's Registrable Securities pursuant to the Shelf Registration Statement.

(d) An Exchange Offer Registration Statement pursuant to Section 2(a) hereof will not be deemed to have become effective unless it has been declared effective by the SEC. A Shelf Registration Statement pursuant to Section 2(b) hereof will not be deemed to have become effective unless it has been declared effective by the SEC or is automatically effective upon filing with the SEC as provided by Rule 462 under the Securities Act.

In the event that either the Exchange Offer is not completed or the Shelf Registration Statement, if required pursuant to Section 2(b)(i) or 2(b)(ii) hereof, has not become effective on or prior to October 4, 2006 (the "*Target Registration Date*"), the interest rate on the Registrable Securities will be increased by (i) 0.25% per annum for the first 90-day period commencing from one day after the Target Registration Date and (ii) an additional 0.25% per annum with respect to each subsequent 90-day period, in each case until the Exchange Offer is completed or the Shelf Registration Statement, if required hereby, becomes effective or the Securities covered by such registration statement on which additional interest is being paid cease to be Registrable Securities; provided that the interest rate on the Registrable Securities at which such additional interest accrues may in no event exceed 1.00% per annum. In the event that the Company receives a Shelf Request from the Initial Purchaser pursuant to Section 2(b)(iii), and the Shelf Registration Statement required to be filed thereby has not become effective by the later of (x) September 4, 2006 or (y) 90 days after delivery of such Shelf Request (such later date, the "*Shelf Additional Interest Date*"), then the interest rate on the Registrable Securities held by the Initial Purchaser will be increased by (i) 0.25% per annum for the first 90-day period payable commencing from one day after the Shelf Additional Interest Date and (ii) an additional 0.25% per annum with respect to each subsequent 90-day period, in each case until the Shelf Registration Statement becomes effective or the Registrable Securities held by the Initial Purchaser become freely tradable under the Securities Act, up to a maximum increase of 1.00% per annum. Any additional interest on the Registrable Securities shall be calculated on the same basis on which Base Interest is calculated on the Securities under the Indenture. Any additional interest accrued for any period shall

be payable at the relevant interest payment date for such period under the terms of the Securities and the Indenture.

If the Shelf Registration Statement, if required hereby, has become effective and thereafter either ceases to be effective or the Prospectus contained therein ceases to be usable, in each case whether or not permitted by this Agreement, at any time during the Shelf Effectiveness Period, and such failure to remain effective or usable exists for more than 75 days (whether or not consecutive) in any 12-month period, then the interest rate on the Registrable Securities will be increased by (i) 0.25% per annum for the first 90-day period commencing on the 76th day and (ii) an additional 0.25% per annum for each subsequent 90-day period, in each case ending on such date that the Shelf Registration Statement has again become effective or the Prospectus again becomes usable. Notwithstanding anything to the contrary in this Agreement, in connection with a Shelf Registration Statement, additional interest on the Registrable Securities shall not accrue and by payable to any Holder if the failure of the Company and/or the Guarantors to comply with their obligations hereunder is a result of the failure of such Holder to fulfill its obligations hereunder.

(e) Without limiting the remedies available to the Initial Purchaser and the Holders, the Company and the Guarantors acknowledge that any failure by the Company or the Guarantors to comply with their obligations under Section 2(a) and Section 2(b) hereof may result in material irreparable injury to the Initial Purchaser or the Holders for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of any such failure, the Initial Purchaser or any Holder may obtain such relief as may be required to specifically enforce the Company's and the Guarantors' obligations under Section 2(a) and Section 2(b) hereof.

(f) The Company represents, warrants and covenants that it (including its agents and representatives) will not prepare, make, use, authorize, approve or refer to any "free-writing prospectus" (as defined in Rule 405 under the Securities Act) in connection with the Securities or the Exchange Securities, other than any communication pursuant to Rule 134 under the Securities Act or any document constituting an offer to sell or solicitation of an offer to buy the Securities or the Exchange Securities that falls within the exception from the definition of prospectus in Section 2(a)(10)(a) of the Securities Act.

3. *Registration Procedures.* (a) In connection with their obligations pursuant to Section 2(a) and Section 2(b) hereof, the Company and the Guarantors shall as soon as practicable (unless otherwise stated below):

(i) prepare and file with the SEC a Registration Statement on the appropriate form under the Securities Act, which form (x) shall be selected by the Company and the Guarantors, (y) shall, in the case of a Shelf Registration, be available for the sale of the Registrable Securities by the Holders thereof and (z) shall comply as to form in all material respects with the requirements of the applicable form and include all financial statements required by the SEC to be filed therewith; and use their reasonable best efforts to cause such Registration Statement to become effective and remain effective for the applicable period in accordance with Section 2 hereof;

(ii) prepare and file with the SEC such amendments and post-effective amendments to the applicable Registration Statement as may be necessary to keep such Registration Statement effective for the applicable period in accordance with Section 2 hereof and cause each Prospectus to be supplemented by any required prospectus supplement and, as so supplemented, to be filed pursuant to Rule 424 under the Securities Act; and keep each Prospectus current during the period described in Section 4(3) of and Rule 174 under the Securities Act that is applicable to transactions by brokers or dealers with respect to the Registrable Securities or Exchange Securities;

(iii) in the case of a Shelf Registration, furnish to each Holder of Registrable Securities, to counsel for the Initial Purchaser (if any Registrable Securities held by the Initial Purchaser are

included in such registration statement), to one firm of counsel for all such Holders and to each Underwriter of an Underwritten Offering of Registrable Securities, if any, without charge, as many copies of each Prospectus or preliminary prospectus, and any amendment or supplement thereto, as such Holder, counsel or Underwriter may reasonably request in order to facilitate the sale or other disposition of the Registrable Securities thereunder; and the Company and the Guarantors consent to the use of such Prospectus, preliminary prospectus and any amendment or supplement thereto in accordance with applicable law by each of the Holders of Registrable Securities and any such Underwriters in connection with the offering and sale of the Registrable Securities covered by and in the manner described in such Prospectus, preliminary prospectus or any amendment or supplement thereto in accordance with applicable law;

(iv) use their reasonable best efforts to register or qualify the Registrable Securities under all applicable state securities or blue sky laws of such jurisdictions as any Holder of Registrable Securities covered by a Registration Statement shall reasonably request in writing by the time the applicable Registration Statement becomes effective; cooperate with such Holders in connection with any filings required to be made with the National Association of Securities Dealers, Inc.; and use reasonable best efforts to do any and all other acts and things that may be reasonably necessary or advisable to enable each Holder to complete the disposition in each such jurisdiction of the Registrable Securities owned by such Holder; *provided* that neither the Company nor any Guarantor shall be required to (1) qualify as a foreign corporation or other entity or as a dealer in securities in any such jurisdiction where it would not otherwise be required to so qualify, (2) file any general consent to service of process in any such jurisdiction, (3) subject itself to taxation in any such jurisdiction if it is not so subject or (4) make any changes to its incorporating or organizational documents or limited liability agreement, if applicable, or any other agreement between it and its stockholders or members, if any;

(v) if the Initial Purchaser holds any Registrable Securities, notify counsel for the Initial Purchaser and, in the case of a Shelf Registration, notify each Holder of Registrable Securities and counsel for such Holders promptly and, if requested by any such Holder or counsel, confirm such advice in writing (such notice, a "Suspension Notice") (1) when a Registration Statement has become effective, when any post-effective amendment thereto has been filed and becomes effective and when the Prospectus or any amendment or supplement to the Prospectus has been filed, (2) of any request by the SEC or any state securities authority for amendments and supplements to a Registration Statement or Prospectus or for additional information after the Registration Statement has become effective, (3) of the issuance by the SEC or any state securities authority of any stop order suspending the effectiveness of a Registration Statement or the initiation of any proceedings for that purpose, including the receipt by the Company of any notice of objection of the SEC to the use of a Shelf Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act, (4) if, between the applicable effective date of a Shelf Registration Statement and the closing of any sale of Registrable Securities covered thereby, the representations and warranties of the Company or any Guarantor contained in any underwriting agreement, securities sales agreement or other similar agreement, if any, relating to an offering of such Registrable Securities cease to be true and correct in all material respects or if the Company or any Guarantor receives any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation of any proceeding for such purpose, (5) of the happening of any event during the period a Shelf Registration Statement is effective that makes any statement made in such Shelf Registration Statement or the related Prospectus untrue in any material respect or that requires the making of any changes in such Shelf Registration Statement or Prospectus in order to make the statements therein, with respect to a Prospectus, in the light of the circumstances under which such statements were made, not misleading, (6) of any determination by the Company or any Guarantor that a post-effective amendment to a Registration Statement or any amendment or supplement to the

Prospectus would be appropriate; and (7) of any occurrence or existence of any corporate development that, in the reasonable judgment of the Company or any Guarantor, would have a material adverse effect on the business or operations of the Company or any of its subsidiaries; provided, however, that in the case of a Shelf Registration, upon the occurrence of any event of the kind described in this Section 3(a)(3), (5), (6) or (7), the Company and the Guarantors shall be entitled to suspend their obligation to file any amendment to the Shelf Registration Statement, furnish any supplement or amendment to a Prospectus included in the Shelf Registration Statement, make any other filing with the SEC, cause the Shelf Registration Statement or other filing with the SEC to remain effective or take any similar action (collectively, "Registration Actions"). Upon the termination of such condition, the Company shall give prompt notice thereof to the Holders and shall as promptly as practicable proceed with all Registration Actions that were suspended pursuant to this paragraph;

(vi) use their reasonable best efforts to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement or, in the case of a Shelf Registration, the resolution of any objection of the SEC pursuant to Rule 401(g)(2), including by promptly filing an amendment to such Shelf Registration Statement on the proper form, and provide notice promptly to each Holder of the withdrawal of any such order or such resolution;

(vii) in the case of a Shelf Registration, furnish to each Holder of Registrable Securities, without charge, at least one conformed copy of each Registration Statement and any post-effective amendment thereto (without any documents incorporated therein by reference or exhibits thereto, unless requested);

(viii) in the case of a Shelf Registration, cooperate with the Holders of Registrable Securities to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends and enable such Registrable Securities to be issued in such denominations and registered in such names (consistent with the provisions of the Indenture) as such Holders may reasonably request at three Business Days prior to the closing of any sale of Registrable Securities made by such Holders;

(ix) in the case of a Shelf Registration, upon the occurrence of any event contemplated by Section 3(a)(v)(5) hereof, use their reasonable best efforts to prepare and file with the SEC a supplement or post-effective amendment to such Shelf Registration Statement or the related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered (or, to the extent permitted by law, made available) to purchasers of the Registrable Securities, such Prospectus will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and the Company shall notify the Holders of Registrable Securities to suspend use of the Prospectus as promptly as practicable after the occurrence of such an event, and such Holders hereby agree to suspend use of the Prospectus until the Company and the Guarantors have amended or supplemented the Prospectus to correct such misstatement or omission;

(x) a reasonable time prior to the filing of any Registration Statement, any Prospectus, any amendment to a Registration Statement or amendment or supplement to a Prospectus or of any document that is to be incorporated by reference into a Registration Statement or a Prospectus after initial filing of a Registration Statement, provide copies of such document to the Initial Purchaser and its counsel (if the Initial Purchaser holds any Registrable Securities) (and, in the case of a Shelf Registration Statement, to the Holders of Registrable Securities and their counsel) and make such of the representatives of the Company and the Guarantors as shall be reasonably requested by the Initial Purchaser or its counsel (if the Initial Purchaser holds any Registrable Securities) (and, in the case of a Shelf Registration Statement, the Holders of Registrable

Securities or their counsel) available for discussion of such document; and the Company and the Guarantors shall not, at any time after initial filing of a Registration Statement, use or file any Prospectus, any amendment of or supplement to a Registration Statement or a Prospectus, or any document that is to be incorporated by reference into a Registration Statement or a Prospectus, of which the Initial Purchaser and its counsel (if the Initial Purchaser holds any Registrable Securities) (and, in the case of a Shelf Registration Statement, the Holders of Registrable Securities and their counsel) shall not have previously been advised and furnished a copy or to which the Initial Purchaser or its counsel (if the Initial Purchaser holds any Registrable securities) (and, in the case of a Shelf Registration Statement, the Holders of Registrable Securities or their counsel) shall reasonably object within five Business Days after receipt thereof, unless the Company believes such Prospectus, amendment or supplement to a Prospectus or document that is to be incorporated by reference into a Registration Statement or Prospectus is required by applicable law;

(xi) obtain a CUSIP number for all Exchange Securities or Registrable Securities, as the case may be, not later than the initial effective date of a Registration Statement covering such Exchange Securities or Registrable Securities;

(xii) cause the Indenture to be qualified under the Trust Indenture Act in connection with the registration of the Exchange Securities or Registrable Securities, as the case may be; cooperate with the Trustee and the Holders to effect such changes to the Indenture as may be required for the Indenture to be so qualified in accordance with the terms of the Trust Indenture Act; and execute, and use their reasonable best efforts to cause the Trustee to execute, all documents as may be required to effect such changes and all other forms and documents required to be filed with the SEC to enable the Indenture to be so qualified in a timely manner;

(xiii) in the case of a Shelf Registration, make available for inspection by a representative of the Holders of a majority of the outstanding aggregate principal amount of the Registrable Securities to be included in such Shelf Registration (an "*Inspector*"), any Underwriter participating in any disposition pursuant to such Shelf Registration Statement, any attorneys and accountants designated by such Holders and any attorneys (but not more than one firm of counsel acting for all such Holders) and accountants designated by such Underwriter, at reasonable times and in a reasonable manner, all pertinent financial and other records, documents and properties of the Company and its subsidiaries, and cause the respective officers, directors and employees of the Company and the Guarantors to supply all information reasonably requested by any such Inspector, Underwriter, attorney or accountant to conduct reasonable investigation within the meaning of Section 11 of the Securities Act in connection with a Shelf Registration Statement; *provided* that that foregoing investigation and information gathering shall be coordinated on behalf of such parties by one firm of counsel designated by and on behalf of such parties; and *provided* further that if any such information is identified by the Company or any Guarantor as being confidential or proprietary, each Person receiving such information shall take such actions as are reasonably necessary to protect the confidentiality of such information to the extent such action is otherwise not inconsistent with, an impairment of or in derogation of the rights and interests of any Inspector, Holder or Underwriter);

(xiv) in the case of a Shelf Registration, use their reasonable best efforts to cause all Registrable Securities to be listed on any securities exchange or any automated quotation system on which similar securities issued or guaranteed by the Company or any Guarantor are then listed if requested by the Majority Holders, to the extent such Registrable Securities satisfy applicable listing requirements;

(xv) if reasonably requested by any Holder of Registrable Securities covered by a Shelf Registration Statement, promptly include in a Prospectus supplement or post-effective amendment

such information with respect to such Holder as such Holder reasonably requests to be included therein and make all required filings of such Prospectus supplement or such post-effective amendment promptly after Company has received notification of the matters to be so included in such filing;

(xvi) in the case of a Shelf Registration, enter into such customary agreements, including, but not limited to, an underwriting agreement which contains indemnities substantially similar to those contained herein, and take all such other actions in connection therewith (including those requested by the Holders of a majority in principal amount of the Registrable Securities covered by the Shelf Registration Statement) in order to expedite or facilitate the disposition of such Registrable Securities including, but not limited to, an Underwritten Offering and in such connection, (1) to the extent possible, make such representations and warranties to and any Underwriters of such Registrable Securities with respect to the business of the Company and its subsidiaries and the Registration Statement, Prospectus and documents incorporated by reference or deemed incorporated by reference, if any, in each case, in form, substance and scope as are customarily made by issuers to underwriters in underwritten offerings and confirm the same if and when required by the applicable underwriting agreement, (2) obtain opinions of counsel to the Company and the Guarantors (which counsel and opinions, in form, scope and substance, shall be reasonably satisfactory to such Underwriters and their respective counsel) addressed to the Underwriters of Registrable Securities, in customary form subject to customary limitations, assumptions and exclusions and covering the matters customarily covered in opinions requested in underwritten offerings, (3) obtain "comfort" letters from the independent certified public accountants of the Company and the Guarantors (and, if necessary, any other certified public accountant of any subsidiary of the Company or any Guarantor, or of any business acquired by the Company or any Guarantor for which financial statements and financial data are or are required to be included in the Registration Statement) addressed to the Underwriter of Registrable Securities, such letters to be in customary form and covering matters of the type customarily covered in "comfort" letters in connection with underwritten offerings, including but not limited to financial information contained in any preliminary prospectus or Prospectus and (4) deliver such documents and certificates as may be reasonably requested by the Underwriters, and which are customarily delivered in underwritten offerings, to evidence the continued validity of the representations and warranties of the Company and the Guarantors made pursuant to clause (1) above and to evidence compliance with any customary conditions contained in the applicable underwriting agreement; and

(xvii) so long as any Registrable Securities remain outstanding, cause each Additional Guarantor upon the creation or acquisition by the Company of such Additional Guarantor, to execute a counterpart to this Agreement in the form attached hereto as Annex A and to deliver such counterpart to the Initial Purchaser no later than five Business Days following the execution thereof.

(b) In the case of a Shelf Registration Statement, the Company may require each Holder of Registrable Securities to furnish to the Company such information regarding such Holder and the proposed disposition by such Holder of such Registrable Securities as the Company and the Guarantors may from time to time reasonably request in writing. The Company and the Guarantors shall be entitled to refuse to include for registration the Registrable Securities held by any Holder who fails to comply with such request and provide the requested information to the extent such information is required by applicable law to be included in the Shelf Registration Statement, and such Holder shall not be entitled to the benefits of any provision of this Agreement.

(c) In the case of a Shelf Registration Statement, each Holder of Registrable Securities covered in such Shelf Registration Statement agrees that, upon receipt of any notice from the Company and the Guarantors of the happening of any event of the kind described in Section 3(a)(v)(2), (3), (5),

(6) or (7) hereof, such Holder will forthwith discontinue disposition of Registrable Securities pursuant to the Shelf Registration Statement until such Holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 3(a)(ix) hereof, or until it is advised in writing by the Company that the use of the Prospectus may be resumed, and, if so directed by the Company and the Guarantors, such Holder will deliver to the Company and the Guarantors all copies in its possession, other than permanent file copies then in such Holder's possession, of the Prospectus covering such Registrable Securities that is current at the time of receipt of such notice.

(d) If the Company and the Guarantors shall give any notice pursuant to Section 3(a)(v) hereof to suspend the disposition of Registrable Securities pursuant to a Shelf Registration Statement, the Company and the Guarantors shall extend the period during which such Shelf Registration Statement shall be maintained effective pursuant to this Agreement by the number of days equal to the number of days in the period from and including the date of the giving of such notice to and including the date when the Holders of such Registrable Securities shall have received copies of the supplemented or amended Prospectus necessary to resume such dispositions. The Company and the Guarantors may give any such notice (pursuant to Section 3(a)(v)(4), (5), (6) or (7) only twice during any 365-day period and any such suspensions shall not exceed an aggregate of 75 days in any 365-day period and there shall not be more than two suspensions in effect during any 365-day period.

(e) The Holders of a majority of the outstanding aggregate principal amount of Registrable Securities to be included in a Shelf Registration Statement shall be entitled to give the Company a written request requesting that the sale of Registrable Securities covered by such registration statement be made in an Underwritten Offering. In any such Underwritten Offering, the investment bank or investment banks and manager or managers (each an "*Underwriter*") that will administer the offering will be selected by the Holders of a majority of the outstanding aggregate principal amount of the Registrable Securities included in such offering, subject to the consent of the Company (not to be unreasonably withheld). Such Holders shall be responsible for all underwriting commissions and discounts in connection therewith. No Holder of Registrable Securities may participate in any Underwritten Offering unless such Holder (i) agrees to sell such Holder's Registrable Securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents required under the terms of such underwriting arrangements.

4. *Participation of Broker-Dealers in Exchange Offer.* (a) The Staff has taken the position that any broker-dealer that receives Exchange Securities for its own account in the Exchange Offer in exchange for Securities that were acquired by such broker-dealer as a result of market-making or other trading activities (a "*Participating Broker-Dealer*") may be deemed to be an "underwriter" within the meaning of the Securities Act and must deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such Exchange Securities.

The Company and the Guarantors understand that it is the Staff's position that if the Prospectus contained in the Exchange Offer Registration Statement includes a plan of distribution containing a statement to the above effect and the means by which Participating Broker-Dealers may resell the Exchange Securities, without naming the Participating Broker-Dealers or specifying the amount of Exchange Securities owned by them, such Prospectus may be delivered by Participating Broker-Dealers (or, to the extent permitted by law, made available to purchasers) to satisfy their prospectus delivery obligation under the Securities Act in connection with resales of Exchange Securities for their own accounts, so long as the Prospectus otherwise meets the requirements of the Securities Act.

(b) In light of the above, and notwithstanding the other provisions of this Agreement, the Company and the Guarantors agree to use their reasonable best efforts to amend or supplement the Prospectus contained in the Exchange Offer Registration Statement for a period ending on the earlier

of (i) 180 days after the last Exchange Date (as such period may be extended pursuant to Section 3(d) of this Agreement), (ii) the date when all Registrable Securities covered by such registration statement have been sold pursuant thereto and (iii) the date on which a Participating Broker-Dealer is no longer required to deliver a prospectus in connection with market-making or other trading activities, if requested by the Initial Purchaser or by one or more Participating Broker-Dealers, in order to expedite or facilitate the disposition of any Exchange Securities by Participating Broker-Dealers consistent with the positions of the Staff recited in Section 4(a) above. The Company and the Guarantors further agree that Participating Broker-Dealers shall be authorized to deliver such Prospectus (or, to the extent permitted by law, make available) during such period in connection with the resales contemplated by this Section 4. The Participating Broker-Dealers shall not be authorized by the Company to deliver and shall not deliver such Prospectus after such period in connection with the resales contemplated by this Section 4.

(c) The Initial Purchaser shall have no liability to the Company, any Guarantor or any Holder with respect to any request that it may make pursuant to Section 4(b) above.

5. *Indemnification and Contribution.* (a) The Company and each Guarantor, jointly and severally, agree to indemnify and hold harmless the Initial Purchaser and each Holder, their respective affiliates, directors and officers and each Person, if any, who controls the Initial Purchaser or any Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, legal fees and other expenses reasonably incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, that arise out of, or are based upon, (1) any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or any omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein not misleading, or (2) any untrue statement or alleged untrue statement of a material fact contained in any Prospectus, any Free Writing Prospectus used in violation of this Agreement or any "issuer information" ("*Issuer Information*") filed or required to be filed pursuant to Rule 433(d) under the Securities Act (the Prospectus, Free Writing Prospectus and Issuer Information, collectively the "*Covered Information*"), or any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case except insofar as such losses, claims, damages or liabilities arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to the Initial Purchaser or information relating to any Holder furnished to the Company in writing through JPMorgan or any selling Holder expressly for use therein; *provided, however,* that the foregoing indemnity agreement with respect to the Covered Information shall not inure to the benefit of any indemnified person, where it shall have been determined by a court of competent jurisdiction by final and nonappealable judgment that (i) prior to the applicable Time of Sale (within the meaning of the Securities Act), the Company shall have notified each Holder that the Registration Statement or Covered Information, as applicable, contains an untrue statement of material fact or omits to state therein a material fact required to be stated therein in order to make the statements therein not misleading in light of the circumstances under which they were made, (ii) such untrue statement or omission of a material fact was corrected or supplemented, as the case may be, in an amendment or supplement to the Registration Statement or Covered Information, as applicable (the "Supplemental Information") and such Supplemental Information was provided to such Holder, or in the case of an Underwritten Offering, the Underwriter(s) reasonably in advance of the applicable Time of Sale (within the meaning of the Securities Act) so that such Supplemental Information could have been provided to such person prior to such Time of Sale, (iii) such Holder or, in the case of an Underwritten Offering, the Underwriter(s) did not convey such Supplemental Information to such person at or prior to the applicable Time of Sale (within the meaning of the Securities Act), and (iv) such loss, claim, damage or

liability would not have occurred had such Holder or Underwriter(s), as the case may be, conveyed the Supplemental Information to such person.

(b) Each Holder agrees, severally and not jointly, to indemnify and hold harmless the Company, the Guarantors, the Initial Purchaser and the other selling Holders, the directors of the Company and the Guarantors, each officer of the Company and the Guarantors who signed the Registration Statement and each Person, if any, who controls the Company, the Guarantors, the Initial Purchaser and any other selling Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the indemnity set forth in paragraph (a) above, but only with respect to any losses, claims, damages or liabilities that arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to such Holder furnished to the Company in writing by or on behalf of such Holder expressly for use in any Registration Statement and any Prospectus.

(c) If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Person in respect of which indemnification may be sought pursuant to either paragraph (a) or (b) above, such Person (the "*Indemnified Person*") shall promptly notify the Person against whom such indemnification may be sought (the "*Indemnifying Person*") in writing; *provided* that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have under this Section 5 except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and *provided*, *further*, that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have to an Indemnified Person otherwise than under this Section 5. If any such proceeding shall be brought or asserted against an Indemnified Person and it shall have notified the Indemnifying Person thereof, the Indemnifying Person shall retain counsel reasonably satisfactory to the Indemnified Person (who shall not, without the consent of the Indemnified Person, be counsel to the Indemnifying Person) to represent the Indemnified Person and any others entitled to indemnification pursuant to this Section 5 that the Indemnifying Person may designate in such proceeding and shall pay the fees and expenses of such proceeding and shall pay the fees and expenses of such counsel related to such proceeding, as incurred. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary; (ii) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person; (iii) the Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the Indemnifying Person; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood and agreed that the Indemnifying Person shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be reimbursed as they are incurred. Any such separate firm (x) for the Initial Purchaser, its affiliates, directors and officers and any control Persons of the Initial Purchaser shall be designated in writing by JPMorgan, (y) for any Holder, its directors and officers and any control Persons of such Holder shall be designated in writing by the Majority Holders and (z) in all other cases shall be designated in writing by the Company. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify each Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an Indemnified Person shall have requested that an Indemnifying Person reimburse the Indemnified Person for fees and expenses of counsel as contemplated by this paragraph, the Indemnifying Person shall be liable for any

settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 60 days after receipt by the Indemnifying Person of such request, (ii) the Indemnifying Person shall not have reimbursed the Indemnified Person in accordance with such request prior to the date of such settlement and (iii) the Indemnified Person shall have given at least 30 days prior written notice of its intention to settle. No Indemnifying Person shall, without the written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnification could have been sought hereunder by such Indemnified Person, unless such settlement (A) includes an unconditional release of such Indemnified Person, in form and substance reasonably satisfactory to such Indemnified Person, from all liability on claims that are the subject matter of such proceeding and (B) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

(d) If the indemnification provided for in paragraphs (a) and (b) above is unavailable to or insufficient to hold harmless an Indemnified Person in respect of any losses, claims, damages or liabilities referred to therein, then each Indemnifying Person under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Guarantors from the offering of the Securities and the Exchange Securities, on the one hand, and by the Holders from receiving Securities or Exchange Securities registered under the Securities Act, on the other hand, or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the Company and the Guarantors on the one hand and the Holders on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative fault of the Company and the Guarantors on the one hand and the Holders on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company and the Guarantors on the one hand or by the Holders on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) The Company, the Guarantors and the Holders agree that it would not be just and equitable if contribution pursuant to this Section 5 were determined by *pro rata* allocation (even if the Holders were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph (d) above. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in paragraph (d) above shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such Indemnified Person in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 5, in no event shall a Holder be required to contribute any amount in excess of the amount by which the total price at which the Securities or Exchange Securities sold by such Holder exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The Holders' obligations to contribute pursuant to this Section 5 are several in proportion to the respective principal amount of the Registrable Securities held by each Holder hereunder and not joint.

(f) The remedies provided for in this Section 5 are not exclusive and shall not limit any rights or remedies that may otherwise be available to any Indemnified Person at law or in equity.

(g) The indemnity and contribution provisions contained in this Section 5 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of the Initial Purchaser or any Holder or any Person controlling the Initial Purchaser or any Holder, or by or on behalf of the Company or the Guarantors or the officers or directors of or any Person controlling the Company or the Guarantors, (iii) acceptance of any of the Exchange Securities and (iv) any sale of Registrable Securities pursuant to a Shelf Registration Statement.

6. *General.*

(a) *No Inconsistent Agreements.* The Company and the Guarantors represent, warrant and agree that (i) the rights granted to the Holders hereunder do not in any way conflict with and are not inconsistent with the rights granted to the holders of any other outstanding securities issued or guaranteed by the Company or any Guarantor under any other agreement and (ii) neither the Company nor any Guarantor has entered into, or on or after the date of this Agreement will enter into, any agreement that is inconsistent with the rights granted to the Holders of Registrable Securities in this Agreement or otherwise conflicts with the provisions hereof.

(b) *Amendments and Waivers.* The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given unless the Company has obtained the written consent of Holders of at least a majority of the aggregate principal amount of the outstanding Registrable Securities (excluding any Registrable Securities owned directly or indirectly by the Company or any of its affiliates) affected by such amendment, modification, supplement, waiver or consent; *provided* that no amendment, modification, supplement, waiver or consent to any departure from the provisions of Section 5 hereof shall be effective as against any Holder of Registrable Securities unless consented to in writing by such Holder. Any amendments, modifications, supplements, waivers or consents pursuant to this Section 6(b) shall be by a writing executed by each of the parties hereto.

(c) *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, registered first-class mail, telex, telecopier, or any courier guaranteeing overnight delivery (i) if to a Holder, at the most current address given by such Holder to the Company by means of a notice given in accordance with the provisions of this Section 6(c), which address initially is, with respect to the Initial Purchaser, the address set forth in the Purchase Agreement; (ii) if to the Company and the Guarantors, initially at the Company's address set forth in the Purchase Agreement and thereafter at such other address, notice of which is given in accordance with the provisions of this Section 6(c); and (iii) to such other persons at their respective addresses as provided in the Purchase Agreement and thereafter at such other address, notice of which is given in accordance with the provisions of this Section 6(c). All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt is acknowledged, if telecopied; and on the next Business Day if timely delivered to an air courier guaranteeing overnight delivery. Copies of all such notices, demands or other communications shall be concurrently delivered by the Person giving the same to the Trustee, at the address specified in the Indenture.

(d) *Successors and Assigns.* This Agreement shall inure to the benefit of and be binding upon the successors, assigns and transferees of each of the parties, including, without limitation and without the need for an express assignment, subsequent Holders; *provided* that nothing herein shall be deemed to permit any assignment, transfer or other disposition of Registrable Securities in violation of the terms of the Purchase Agreement or the Indenture. If any transferee of any Holder shall acquire Registrable Securities in any manner, whether by operation of law or otherwise, such Registrable Securities shall be held subject to all the terms of this Agreement, and by taking and holding such Registrable Securities

such Person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement and such Person shall be entitled to receive the benefits hereof. The Initial Purchaser (in its capacity as Initial Purchaser) shall have no liability or obligation to the Company or the Guarantors with respect to any failure by a Holder to comply with, or any breach by any Holder of, any of the obligations of such Holder under this Agreement.

(e) *Third Party Beneficiaries.* Each Holder shall be a third party beneficiary to the agreements made hereunder between the Company and the Guarantors, on the one hand, and the Initial Purchaser, on the other hand, and shall have the right to enforce such agreements directly to the extent it deems such enforcement necessary or advisable to protect its rights or the rights of other Holders hereunder.

(f) *Counterparts.* This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(g) *Headings.* The headings in this Agreement are for convenience of reference only, are not a part of this Agreement and shall not limit or otherwise affect the meaning hereof.

(h) *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(i) *Entire Agreement; Severability.* This Agreement contains the entire agreement between the parties relating to the subject matter hereof and supersedes all oral statements and prior writings with respect thereto. If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable or against public policy, the remainder of the terms, provisions, covenants and restrictions contained herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated. The Company, the Guarantors and the Initial Purchaser shall endeavor in good faith negotiations to replace the invalid, void or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, void or unenforceable provisions.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

DAVE & BUSTERS, INC.

By: _____

Name:
Title:

D&B LEASING, INC.
D&B REALTY HOLDING, INC.
DANB TEXAS, INC.
DAVE & BUSTER'S I, L.P.
DAVE & BUSTER'S MANAGEMENT CORPORATION, INC.
DAVE & BUSTER'S OF CALIFORNIA, INC.
DAVE & BUSTER'S OF COLORADO, INC.
DAVE & BUSTER'S OF FLORIDA, INC.
DAVE & BUSTER'S OF GEORGIA, INC.
DAVE & BUSTER'S OF HAWAII, INC.
DAVE & BUSTER'S OF ILLINOIS, INC.
DAVE & BUSTER'S OF KANSAS, INC.
DAVE & BUSTER'S OF MARYLAND, INC.
DAVE & BUSTER'S OF NEBRASKA, INC.
DAVE & BUSTER'S OF NEW YORK, INC.
DAVE & BUSTER'S OF PENNSYLVANIA, INC.
DAVE & BUSTER'S OF PITTSBURGH, INC.
TANGO ACQUISITION, INC.
TANGO LICENSE CORPORATION
TANGO OF ARIZONA, INC.
TANGO OF ARUNDEL, INC.
TANGO OF FARMINGDALE, INC.
TANGO OF FRANKLIN, INC.
TANGO OF HOUSTON, INC.
TANGO OF MINNESOTA, INC.
TANGO OF NORTH CAROLINA, INC.
TANGO OF SUGARLOAF, INC.
TANGO OF TENNESSEE, INC.
TANGO OF WESTBURY, INC.

By: _____

Name:
Title:

Confirmed and accepted as of the date first above written:

J.P. MORGAN SECURITIES INC.

By _____

Authorized Signatory

Counterpart to Registration Rights Agreement

The undersigned hereby absolutely, unconditionally and irrevocably agrees as a Guarantor (as defined in the Registration Rights Agreement, dated as of March 8, 2006 by and among the Company, a Missouri corporation, the guarantors party thereto and J.P. Morgan Securities Inc., as the Initial Purchaser) to be bound by the terms and provisions of such Registration Rights Agreement.

IN WITNESS WHEREOF, the undersigned has executed this counterpart as of _____.

[NAME]

By _____

Name:
Title:

List of Guarantors

D&B Leasing, Inc.
D&B Realty Holding, Inc.
DANB Texas, Inc.
Dave & Buster's I, L.P.
Dave & Buster's Management Corporation, Inc.
Dave & Buster's of California, Inc.
Dave & Buster's of Colorado, Inc.
Dave & Buster's of Florida, Inc.
Dave & Buster's of Georgia, Inc.
Dave & Buster's of Hawaii, Inc.
Dave & Buster's of Illinois, Inc.
Dave & Buster's of Kansas, Inc.
Dave & Buster's of Maryland, Inc.
Dave & Buster's of Nebraska, Inc.
Dave & Buster's of New York, Inc.
Dave & Buster's of Pennsylvania, Inc.
Dave & Buster's of Pittsburgh, Inc.
Tango Acquisition, Inc.
Tango License Corporation
Tango of Arizona, Inc.
Tango of Arundel, Inc.
Tango of Farmingdale, Inc.
Tango of Franklin, Inc.
Tango of Houston, Inc.
Tango of Minnesota, Inc.
Tango of North Carolina, Inc.
Tango of Sugarloaf, Inc.
Tango of Tennessee, Inc.
Tango of Westbury, Inc.

Exhibit 5.1

[Letterhead of Hallett & Perrin]

July 26, 2006

Dave & Buster's, Inc.
2481 Manana Drive
Dallas, Texas 75220

Re: *Registration Statement on Form S-4 Filed by Dave & Buster's, Inc. and the Guarantors (defined below) relating to the Exchange Offer (defined below)*

Ladies and Gentlemen:

We have acted as counsel to Dave & Buster's, Inc., a Missouri corporation (the "Company"), in connection with the issuance and exchange (the "Exchange Offer") of up to $175,000,000 aggregate principal amount of the Company's 11 1/4% Senior Notes due 2014 (the "Exchange Notes") for an equal principal amount of the Company's 11 1/4% Senior Notes due 2014 outstanding on the date hereof (the "Restricted Notes") and the guarantee of the Exchange Notes by the companies listed on Schedule I hereto (collectively the "Guarantors"). The Exchange Notes will be issued pursuant to the Indenture, dated as of March 8, 2006 (the "Indenture"), among the Company, the Guarantors and The Bank of New York Trust Company, N.A., as Trustee, (the "Trustee"). The Restricted Notes are, and the Exchange Notes will be, guaranteed (each, a "Guarantee") on a joint and several basis by the Guarantors.

In connection with the opinions expressed herein, we have examined such documents, records and matters of law as we have deemed relevant or necessary. Based upon the foregoing, and subject to the further assumptions, qualifications and limitations set forth herein, we are of the opinion that:

1. The Exchange Notes, when they are executed by the Company, authenticated by the Trustee in accordance with the Indenture and delivered in exchange for the Restricted Notes in accordance with the terms of the Exchange Offer, will be validly issued by the Company and will constitute valid and binding obligations of the Company.

2. The Guarantees of the Exchange Notes (the "Exchange Guarantees") of the Guarantors, when they are executed and delivered in accordance with the terms of the Exchange Offer in exchange for the Guarantees of the Restricted Notes (the "Outstanding Guarantees") of the Guarantors, will be validly issued by the respective Guarantor and will constitute a valid and binding obligation of the respective Guarantor.

Our opinions with respect to the Exchange Notes and Exchange Guarantees are subject to (i) bankruptcy, insolvency, reorganization, fraudulent transfer and fraudulent conveyance, voidable preference, moratorium or other similar laws, and related regulations and judicial doctrines from time to time in effect relating to or affecting creditors' rights and remedies generally, and (ii) general equitable principles, whether such principles are considered in a proceeding at law or in equity.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement and to the reference to us under the caption "Legal Matters" in the prospectus constituting a part of the Registration Statement.

Very truly yours,

/s/ HALLETT & PERRIN

Schedule I

D&B Leasing, Inc.
D&B Realty Holding, Inc.
DANB Texas, Inc.
Dave & Buster's I, L.P.
Dave & Buster's Management Corporation, Inc.
Dave & Buster's of California, Inc.
Dave & Buster's of Colorado, Inc.
Dave & Buster's of Florida, Inc.
Dave & Buster's of Georgia, Inc.
Dave & Buster's of Hawaii, Inc.
Dave & Buster's of Illinois, Inc.
Dave & Buster's of Kansas, Inc.
Dave & Buster's of Maryland, Inc.
Dave & Buster's of Nebraska, Inc.
Dave & Buster's of New York, Inc.
Dave & Buster's of Pennsylvania, Inc.
Dave & Buster's of Pittsburgh, Inc.
Tango Acquisition, Inc.
Tango License Corporation
Tango of Arizona, Inc.
Tango of Arundel, Inc.
Tango of Farmingdale, Inc.
Tango of Franklin, Inc.
Tango of Houston, Inc.
Tango of Minnesota, Inc.
Tango of North Carolina, Inc.
Tango of Sugarloaf, Inc.
Tango of Tennessee, Inc.
Tango of Westbury, Inc.

Exhibit 10.1

$160,000,000

CREDIT AGREEMENT

among

WS MIDWAY HOLDINGS, INC.,

DAVE & BUSTER'S, INC.,

as Borrower,

6131646 CANADA INC.,

as Canadian Borrower,

The Several Lenders from Time to Time Parties Hereto,

WELLS FARGO BANK, N.A. and CIT LENDING SERVICES CORPORATION,

as Co-Documentation Agents,

BANK OF AMERICA, N.A.,

as Syndication Agent,

and

JPMORGAN CHASE BANK, N.A.,

as Administrative Agent

Dated as of March 8, 2006

J.P. MORGAN SECURITIES INC., as Lead Arranger and Bookrunner

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SCHEDULES:

EXHIBITS:

CREDIT AGREEMENT (this "*Agreement*"), dated as of March 8, 2006, among WS MIDWAY HOLDINGS, INC., a Delaware corporation ("*Holdings*"), DAVE & BUSTER'S, INC., a Missouri corporation (the "*Borrower*"), 6131646 CANADA INC., a Canadian corporation (the "*Canadian Borrower*"), the several banks and other financial institutions or entities from time to time parties to this Agreement (the "*Lenders*"), WELLS FARGO BANK, N.A. and CIT LENDING SERVICES CORPORATION, as co-documentation agents (collectively, in such capacity, the "*Documentation Agents*"), BANK OF AMERICA, N.A., as syndication agent (in such capacity, the "*Syndication Agent*"), and JPMORGAN CHASE BANK, N.A., as administrative agent.

The parties hereto hereby agree as follows:

SECTION 1. DEFINITIONS

1.1 *Defined Terms.* As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

"*ABR*": for any day, a rate per annum (rounded upwards, if necessary, to the next $^{1}/_{16}$ of 1%) equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Base CD Rate in effect on such day plus 1% and (c) the Federal Funds Effective Rate in effect on such day plus $^{1}/_{2}$ of 1%. For purposes hereof: "*Prime Rate*" shall mean the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A. as its prime rate in effect at its principal office in New York City (the Prime Rate not being intended to be the lowest rate of interest charged by JPMorgan Chase Bank, N.A. in connection with extensions of credit to debtors); "*Base CD Rate*" shall mean the sum of (a) the product of (i) the Three-Month Secondary CD Rate and (ii) a fraction, the numerator of which is one and the denominator of which is one minus the CD Reserve Percentage and (b) the CD Assessment Rate; and "*Three-Month Secondary CD Rate*" shall mean, for any day, the secondary market rate for three-month certificates of deposit reported as being in effect on such day (or, if such day shall not be a Business Day, the next preceding Business Day) by the Board through the public information telephone line of the Federal Reserve Bank of New York (which rate will, under the current practices of the Board, be published in Federal Reserve Statistical Release H.15(519) during the week following such day), or, if such rate shall not be so reported on such day or such next preceding Business Day, the average of the secondary market quotations for three-month certificates of deposit of major money center banks in New York City received at approximately 10:00 A.M., New York City time, on such day (or, if such day shall not be a Business Day, on the next preceding Business Day) by JPMorgan Chase Bank, N.A. from three New York City negotiable certificate of deposit dealers of recognized standing selected by it. Any change in the ABR due to a change in the Prime Rate, the Three-Month Secondary CD Rate or the Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate, the Three-Month Secondary CD Rate or the Federal Funds Effective Rate, respectively.

"*ABR Loans*": Loans the rate of interest applicable to which is based upon the ABR.

"*Acquisition*": as defined in Section 5.1.

"*Acquisition Agreement*": the Agreement and Plan of Merger, dated as of December 8, 2005, by and among the Borrower, Holdings and Acquisition Sub.

"*Acquisition Consideration*": as defined in Section 4.16.

"*Acquisition Documentation*": collectively, the Acquisition Agreement and all schedules, exhibits and annexes thereto and all side letters and agreements affecting the terms thereof or entered into in connection therewith.

"*Acquisition Sub*": WS Midway Acquisition Sub, Inc., a Missouri corporation and a Wholly Owned Subsidiary of Holdings.

"*Addendum*": an instrument, substantially in the form of Exhibit H, by which a Lender becomes a party to this Agreement as of the Closing Date.

"*Additional Revolving Loans*": as defined in Section 2.4A.

"*Adjusted Debt*": at any date, the sum of (a) Consolidated Total Debt at such date *plus* (b) an amount equal to eight times the annual rental payments (excluding payments constituting Capital Lease Obligations) of the Borrower and its Subsidiaries as of such date.

"*Adjusted EBITDAR*": for any period, the sum of (a) Consolidated EBITDA for such period, subject to adjustments permitted by Regulation S-X and such other adjustments as the Administrative Agent reasonably determines reflect the pro forma financial condition of the Borrower and may be used in the offering memorandum or prospectus for the Senior Notes (*provided* that adjustments not materially different from those set forth on Schedule 1.1C shall be deemed to be satisfactory to the Administrative Agent), *plus* (b) the aggregate amount of fixed and contingent rental payments of the Borrower and its Subsidiaries for such period.

"*Adjustment Date*": as defined in the definition of Pricing Grid.

"*Administrative Agent*": JPMorgan Chase Bank, N.A., together with its affiliates, as the arranger of the Commitments and as the administrative agent for the Lenders under this Agreement and the other Loan Documents, together with any of its successors (it being understood that, with respect to the Canadian Revolving Loans, the Administrative Agent shall be JPMorgan Chase Bank, N.A., Toronto Branch).

"*Affiliate*": as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

"*Agents*": the collective reference to the Syndication Agent, the Documentation Agents and the Administrative Agent.

"*Aggregate Exposure*": with respect to any Lender at any time, an amount equal to (a) until the Closing Date, the aggregate amount of such Lender's Commitments at such time and (b) thereafter, the sum of (i) the aggregate then unpaid principal amount of such Lender's Tranche B Term Loans, (ii) the amount of such Lender's Tranche C Term Commitment then in effect or, if the Tranche C Term Commitments have been terminated, the aggregate then unpaid principal amount of such Lender's Tranche C Term Loans, (iii) the amount of such Lender's Revolving Commitment then in effect or, if the Revolving Commitments have been terminated, the amount of such Lender's Revolving Extensions of Credit then outstanding and (iv) the amount of such Lender's Canadian Revolving Commitment then in effect or, if the Canadian Revolving Commitments have been terminated, the amount of such Lender's Canadian Revolving Extensions of Credit then outstanding.

"*Aggregate Exposure Percentage*": with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender's Aggregate Exposure at such time to the Aggregate Exposure of all Lenders at such time.

"*Agreement*": as defined in the preamble hereto.

"*Applicable Margin*": for each Type of Loan, the rate per annum set forth under the relevant column heading below:

	ABR Loans	Eurodollar Loans
Revolving Loans, Additional Revolving Loans and Swingline Loans	1.75%	2.75%
Term Loans	1.50%	2.50%
	Canadian Prime Rate Loans	**Canadian Cost of Funds Loans**
Canadian Revolving Loans	1.75%	2.75%

; *provided*, that on and after the first Adjustment Date occurring after the completion of two full fiscal quarters of the Borrower after the Closing Date, the Applicable Margin with respect to the Term Loans will be determined pursuant to the Pricing Grid.

"*Application*": an application, in such form as the Issuing Lender may specify from time to time, requesting the Issuing Lender to open a Letter of Credit.

"*Approved Fund*": as defined in Section 10.6(b).

"*Asset Sale*": any Disposition of property or series of related Dispositions of property (excluding any such Disposition permitted by clause (a), (b), (c), (d), (e), (g), (h) or (i) of Section 7.5) that yields gross proceeds to any Group Member (valued at the initial principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at fair market value in the case of other non-cash proceeds) in excess of $1,000,000.

"*Assignee*": as defined in Section 10.6(b).

"*Assignment and Assumption*": an Assignment and Assumption, substantially in the form of Exhibit E.

"*Available Canadian Revolving Commitment*": as to any Canadian Revolving Lender at any time, an amount equal to the excess, if any, of (a) such Canadian Revolving Commitment then in effect *over* (b) such Lender's Canadian Revolving Extensions of Credit then outstanding.

"*Available Revolving Commitment*": as to any Revolving Lender at any time, an amount equal to the excess, if any, of (a) such Lender's Revolving Commitment then in effect *over* (b) such Lender's Revolving Extensions of Credit then outstanding; *provided*, that in calculating any Lender's Revolving Extensions of Credit for the purpose of determining such Lender's Available Revolving Commitment pursuant to Section 2.8(a), the aggregate principal amount of Swingline Loans then outstanding shall be deemed to be zero.

"*Benefitted Lender*": as defined in Section 10.7(a).

"*Board*": the Board of Governors of the Federal Reserve System of the United States (or any successor).

"*Borrower*": as defined in the preamble hereto.

"*Borrowing Date*": any Business Day specified by the Borrower or the Canadian Borrower as a date on which such Borrower or Canadian Borrower requests the relevant Lenders to make Loans hereunder.

"*Business*": as defined in Section 4.17(b).

"*Business Day*": a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close, *provided*, that with respect to notices and

determinations in connection with, and payments of principal and interest on, Eurodollar Loans, such day is also a day for trading by and between banks in Dollar deposits in the interbank eurodollar market.

"*Calculation Date*": (a) the last calendar day of each month (or, if such day is not a Canadian Business Day, the next succeeding Canadian Business Day) and (b) at any time when a Default or Event of Default shall have occurred and be continuing, any other Canadian Business Day which the Administrative Agent may determine in its sole discretion to be a Calculation Date.

"*Canadian Borrower*": as defined in the preamble hereto.

"*Canadian Business Day*": a Business Day and a day other than a Saturday, Sunday or other day on which commercial banks in Toronto, Ontario are authorized or required by law to close.

"*Canadian Cost of Funds Loan*": a Canadian Revolving Loan funded in Canadian Dollars, bearing interest calculated by reference to the Canadian Cost of Funds Rate.

"*Canadian Cost of Funds Rate*": the fixed rate of interest determined by JPMorgan Chase Bank, N.A., Toronto Branch at or about 10:00 A.M., New York City time, on the first day of an Interest Period in respect of a Canadian Cost of Funds Loan as being sufficient to compensate JPMorgan Chase Bank, N.A., Toronto Branch for its cost of funds for funding a Canadian Cost of Funds Loan in an aggregate amount equal to the Canadian Cost of Funds Loan and having a maturity comparable to the Interest Period relating to said Canadian Costs of Funds Loan.

"*Canadian Dollars or C$*": dollars designated as lawful currency of Canada.

"*Canadian Prime Rate*": the higher of (a) the annual rate of interest announced from time to time by JPMorgan Chase Bank, N.A., Toronto Branch at its head office as its "prime rate" for C$ denominated commercial loans to borrowers in Canada (it being understood that such rate is a reference rate and not necessarily the lowest rate of interest charged by JPMorgan Chase Bank, N.A., Toronto Branch) and (b) the sum of (i) the CDOR Rate and (ii) 1% per annum.

"*Canadian Prime Rate Loan*": a Canadian Revolving Loan funded in Canadian Dollars that accrues interest calculated by reference to the Canadian Prime Rate.

"*Canadian Revolving Commitment*": as to any Canadian Revolving Lender, the obligation of such Lender, if any, to make Canadian Revolving Loans and Additional Revolving Loans in an aggregate principal amount not to exceed the amount set forth under the heading "Canadian Revolving Commitment" opposite such Lender's name on Schedule 1.1D or in the Assignment and Assumption pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The original amount of the Total Canadian Revolving Commitments is $5,000,000.

"*Canadian Revolving Extensions of Credit*": as to any Canadian Revolving Lender at any time, an amount equal to the aggregate principal amount (USD Equivalent) of all Canadian Revolving Loans and Additional Revolving Loans held by such Lender then outstanding.

"*Canadian Revolving Lender*": the Lender set forth on Schedule 1.1D and any other Eligible Canadian Assignee who becomes an assignee of any rights and obligations of a Canadian Revolving Lender pursuant to Section 10.6, acting in their role as makers of Canadian Revolving Loans and Additional Revolving Loans, none of which lenders shall be a non-resident of Canada for purposes of the Income Tax Act (Canada), except as otherwise provided under the definition of Eligible Canadian Assignee.

"*Canadian Revolving Loans*": as defined in Section 2.4A.

"*Canadian Revolving Percentage*": as to any Canadian Revolving Lender at any time, the percentage which such Lender's Canadian Revolving Commitment then constitutes of the Total Canadian Revolving Commitments or, at any time after the Canadian Revolving Commitments shall have expired or terminated, the percentage which the aggregate principal amount of such Lender's Canadian Revolving Loans and Additional Revolving Loans then outstanding constitutes of the aggregate principal amount of the Canadian Revolving Loans and Additional Revolving Loans then outstanding.

"*Capital Expenditures*": for any period, with respect to any Person, the aggregate of all expenditures by such Person and its Subsidiaries for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that should be capitalized under GAAP on a consolidated balance sheet of such Person and its Subsidiaries; *provided* that such amount shall be reduced by amounts received by the Borrower or any of its Subsidiaries from any landlord in such period in respect of landlord contributions, as specified in the applicable lease with such landlord, if and to the extent that the expenditures in respect of which such contributions were made would otherwise be treated as Capital Expenditures hereunder.

"*Capital Lease Obligations*": as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"*Capital Stock*": any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing.

"*Cash Equivalents*": (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (b) certificates of deposit, time deposits, eurodollar time deposits or overnight bank deposits having maturities of six months or less from the date of acquisition issued by any Lender or by any commercial bank organized under the laws of the United States or any state thereof having combined capital and surplus of not less than $500,000,000; (c) commercial paper of an issuer rated at least A-1 by S&P or P-1 by Moody's, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within six months from the date of acquisition; (d) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than 30 days, with respect to securities issued or fully guaranteed or insured by the United States government; (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody's; (f) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition; (g) money market mutual or similar funds that invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition; or (h) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $5,000,000,000.

"*CCOF Tranche*": the collective reference to Canadian Cost of Funds Loans the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

"*CD Assessment Rate*": for any day as applied to any ABR Loan, the annual assessment rate in effect on such day that is payable by a member of the Bank Insurance Fund maintained by the Federal Deposit Insurance Corporation (the "*FDIC*") classified as well-capitalized and within supervisory subgroup "B" (or a comparable successor assessment risk classification) within the meaning of 12 C.F.R. § 327.4 (or any successor provision) to the FDIC (or any successor) for the FDIC's (or such successor's) insuring time deposits at offices of such institution in the United States.

"*CD Reserve Percentage*": for any day as applied to any ABR Loan, that percentage (expressed as a decimal) which is in effect on such day, as prescribed by the Board, for determining the maximum reserve requirement for a Depositary Institution (as defined in Regulation D of the Board as in effect from time to time) in respect of new non-personal time deposits in Dollars having a maturity of 30 days or more.

"*CDOR Rate*": the annual rate of interest equal to the average 30 day rate applicable to Canadian bankers' acceptances appearing on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. 1991 ISDA definitions, as modified and amended from time to time) as of 10:00 A.M., New York City time, on such day, or if such day is not a Canadian Business Day, then on the immediately preceding Canadian Business Day; *provided* that if such rate does not appear on the Reuters Screen CDOR Page as contemplated, then the CDOR Rate on any day shall be calculated as the arithmetic mean of the 30 day rates applicable to Canadian bankers' acceptances quoted by the Schedule I Reference Banks as of 10:00 A.M., New York City time, on such day, or if such day is not a Canadian Business Day, then on the immediately preceding Canadian Business Day.

"*Closing Date*": the date on which the conditions precedent set forth in Section 5.1 shall have been satisfied, which date is March 8, 2006.

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

"*Collateral*": all property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document.

"*Commitment*": as to any Lender, the sum of the Tranche B Term Commitment, the Tranche C Term Commitment, the Revolving Commitment and the Canadian Revolving Commitment of such Lender.

"*Commitment Fee Rate*": $^{1}/_{2}$ of 1% per annum.

"*Commonly Controlled Entity*": an entity, whether or not incorporated, that is under common control with the Borrower within the meaning of Section 4001 of ERISA or is part of a group that includes the Borrower and that is treated as a single employer under Section 414 of the Code.

"*Compliance Certificate*": a certificate duly executed by a Responsible Officer substantially in the form of Exhibit B.

"*Conduit Lender*": any special purpose corporation organized and administered by any Lender for the purpose of making Loans otherwise required to be made by such Lender and designated by such Lender in a written instrument; *provided*, that the designation by any Lender of a Conduit Lender shall not relieve the designating Lender of any of its obligations to fund a Loan under this Agreement if, for any reason, its Conduit Lender fails to fund any such Loan, and the designating Lender (and not the Conduit Lender) shall have the sole right and responsibility to deliver all consents and waivers required or requested under this Agreement with respect to its Conduit Lender, and *provided*, *further*, that no Conduit Lender shall (a) be entitled to receive any greater amount pursuant to Section 2.18, 2.19, 2.20

or 10.5 than the designating Lender would have been entitled to receive in respect of the extensions of credit made by such Conduit Lender or (b) be deemed to have any Commitment.

"*Confidential Information Memorandum*": the Confidential Information Memorandum dated February 2006 and furnished to certain Lenders.

"*Consolidated Current Assets*": at any date, all amounts (other than cash and Cash Equivalents) that would, in conformity with GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a consolidated balance sheet of the Borrower and its Subsidiaries at such date.

"*Consolidated Current Liabilities*": at any date, all amounts that would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a consolidated balance sheet of the Borrower and its Subsidiaries at such date, but excluding (a) the current portion of any Funded Debt of the Borrower and its Subsidiaries and (b) without duplication of clause (a) above, all Indebtedness consisting of Revolving Loans, Canadian Revolving Loans, Additional Revolving Loans or Swingline Loans to the extent otherwise included therein.

"*Consolidated EBITDA*": for any period, Consolidated Net Income for such period *plus*, without duplication and to the extent reflected as a charge in the statement of such Consolidated Net Income for such period, the sum of (a) income tax expense, (b) interest expense, amortization or writeoff of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness (including the Loans), (c) depreciation and amortization expense, (d) amortization of intangibles (including, but not limited to, goodwill) and organization costs, (e) any extraordinary or non-recurring non-cash expenses or losses, (f) any extraordinary or non-recurring cash expenses or losses in an aggregate amount not to exceed $3,500,000 in any Fiscal Year of the Borrower, (g) non-cash expenses resulting from any employee benefit or management compensation plan or the grant of stock and stock options to employees of the Borrower or any of its Subsidiaries pursuant to a written plan or agreement, (h) cash expenses incurred in connection with the Acquisition and the financing thereof in an aggregate amount not to exceed $20,000,000, (i) Consolidated Start-up Costs for such period in an aggregate amount not to exceed $5,000,000 in any Fiscal Year of the Borrower, (j) management fees and expenses paid to Wellspring and its Control Investment Affiliates permitted by Section 7.10 and (k) expenses incurred prior to the Closing Date relating to the closing of Mall of America Units and conversion costs incurred prior to the Closing Date relating to the conversion of Jillian's Units, and *minus*, (a) to the extent included in the statement of such Consolidated Net Income for such period, the sum of (i) interest income, (ii) any extraordinary, unusual or non-recurring income or gains (including, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, gains on the sales of assets outside of the ordinary course of business), (iii) income tax credits (to the extent not netted from income tax expense) and (iv) any other non-cash income and (b) any cash payments made during such period in respect of items described in clause (e) above subsequent to the fiscal quarter in which the relevant non-cash expenses or losses were reflected as a charge in the statement of Consolidated Net Income, all as determined on a consolidated basis. For the purposes of calculating Consolidated EBITDA for any period of four consecutive fiscal quarters (each, a "Reference Period") pursuant to any determination of the Consolidated Leverage Ratio, (i) if at any time during such Reference Period the Borrower or any Subsidiary shall have made any Material Disposition, the Consolidated EBITDA for such Reference Period shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the property that is the subject of such Material Disposition for such Reference Period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto for such Reference Period and (ii) if during such Reference Period the Borrower or any Subsidiary shall have made a Material Acquisition, Consolidated EBITDA for such Reference Period shall be calculated after giving *pro forma* effect thereto as if such Material Acquisition occurred on the first day of such Reference Period. As used in this definition, "Material Acquisition" means any acquisition of property or series of related acquisitions of property that (a) constitutes assets comprising all or substantially all of an operating unit

of a business or constitutes all or substantially all of the common stock of a Person and (b) involves the payment of consideration by the Borrower and its Subsidiaries in excess of $1,000,000; and "Material Disposition" means any Disposition of property or series of related Dispositions of property that yields gross proceeds to the Borrower or any of its Subsidiaries in excess of $1,000,000.

"*Consolidated EBITDAR*": for any period, Consolidated EBITDA for such period, plus Consolidated Lease Expense for such period.

"*Consolidated Fixed Charge Coverage Ratio*": for any period, the ratio of (a) Consolidated EBITDAR for such period less the aggregate amount actually paid by the Borrower and its Subsidiaries during such period on account of Maintenance Capital Expenditures (excluding (i) the principal amount of Indebtedness (other than any Loans) incurred in connection with such expenditures and (ii) any Reinvestment Deferred Amount) to (b) Consolidated Fixed Charges for such period.

"*Consolidated Fixed Charges*": for any period, the sum (without duplication) of (a) Consolidated Interest Expense for such period, (b) Consolidated Lease Expense for such period and (c) scheduled payments made during such period on account of principal of Indebtedness of the Borrower or any of its Subsidiaries (including scheduled principal payments in respect of the Term Loans).

"*Consolidated Interest Expense*": for any period, total cash interest expense (including that attributable to Capital Lease Obligations) of the Borrower and its Subsidiaries for such period with respect to all outstanding Indebtedness of the Borrower and its Subsidiaries (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP).

"*Consolidated Lease Expense*": for any period, the aggregate amount of fixed and contingent rentals payable by the Borrower and its Subsidiaries for such period with respect to leases of real and personal property, determined on a consolidated basis in accordance with GAAP.

"*Consolidated Leverage Ratio*": as at the last day of any period, the ratio of (a) Consolidated Total Debt on such day to (b) Consolidated EBITDA for such period.

"*Consolidated Net Income*": for any period, the consolidated net income (or loss) of the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP; *provided* that there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary of the Borrower or is merged into or consolidated with the Borrower or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary of the Borrower) in which the Borrower or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Borrower or such Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any Contractual Obligation (other than under any Loan Document) or Requirement of Law applicable to such Subsidiary.

"*Consolidated Start-up Costs*": consolidated "start-up costs" (as such term is defined in SOP 98-5 published by the American Institute of Certified Public Accountants) of the Borrower and its Subsidiaries related to the acquisition, opening and organizing of new Units or conversion of existing Units, including, without limitation, the cost of feasibility studies, staff-training and recruiting and travel costs for employees engaged in such start-up activities, in each case net of landlord reimbursements for such costs.

"*Consolidated Total Debt*": at any date, the aggregate principal amount of all Indebtedness of the Borrower and its Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP; *provided* that obligations described in clause (f) of the definition of "Indebtedness" shall not

constitute "Consolidated Total Indebtedness" to the extent such obligations are not drawn and unreimbursed.

"*Consolidated Working Capital*": at any date, the excess of Consolidated Current Assets on such date *over* Consolidated Current Liabilities on such date.

"*Continuing Directors*": the directors of Holdings on the Closing Date, after giving effect to the Acquisition and the other transactions contemplated hereby, and each other director, if, in each case, such other director's nomination for election to the board of directors of Holdings is recommended by at least $66^2/_3\%$ of the then Continuing Directors or such other director receives the vote of the Permitted Investors in his or her election by the shareholders of Holdings.

"*Contractual Obligation*": as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"*Control Investment Affiliate*": as to any Person, any other Person that (a) directly or indirectly, is in control of, is controlled by, or is under common control with, such Person and (b) is organized by primarily for the purpose of making equity or debt investments in one or more companies. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

"*Cure Amount*": as defined in Section 8.2.

"*Cure Right*": as defined in Section 8.2.

"*Default*": any of the events specified in Section 8.1, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"*Disposition*": with respect to any property, any sale, lease, sale and leaseback (including, without limitation, any Permitted Sale-Leaseback), assignment, conveyance, transfer or other disposition thereof. The terms "*Dispose*" and "*Disposed of*" shall have correlative meanings.

"*Documentation Agents*": as defined in the preamble hereto.

"*Dollars*" and "*$*": dollars in lawful currency of the United States.

"*Domestic Subsidiary*": any Subsidiary of the Borrower organized under the laws of any jurisdiction within the United States.

"*ECF Percentage*": 50%; *provided*, that, with respect to each Fiscal Year of the Borrower ending on or after February 4, 2007, the ECF Percentage shall be reduced to (a) 25% if the Consolidated Leverage Ratio as of the last day of such Fiscal Year is not greater than 4.0 to 1.0 and (b) 0% if the Consolidated Leverage Ratio as of the last day of such Fiscal Year is not greater than 3.0 to 1.0.

"*Eligible Canadian Assignee*": any institutional lender which is (i) a lender named in Schedule I, Schedule II or Schedule III to the Bank Act (Canada) having total assets in excess of C$500,000,000, (ii) any other lender approved by the Administrative Agent and the Canadian Borrower, which approval shall not be unreasonably withheld or (iii) if, but only if, an Event of Default has occurred and is continuing, any other bank, insurance company, commercial finance company or other financial institution or other Person approved by the Administrative Agent, such approval not to be unreasonably withheld, or any Approved Fund.

"*Environmental Laws*": any and all foreign, Federal, state, provincial, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Materials of Environmental Concern

or occupational safety and health matters (as such matters relate to Materials of Environmental Concern or exposure thereto), as now or may at any time hereafter be in effect.

"*ERISA*": the Employee Retirement Income Security Act of 1974, as amended from time to time.

"*Eurocurrency Reserve Requirements*": for any day as applied to a Eurodollar Loan, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including basic, supplemental, marginal and emergency reserves) under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board) maintained by a member bank of the Federal Reserve System.

"*Eurodollar Base Rate*": with respect to each day during each Interest Period pertaining to a Eurodollar Loan, the rate per annum determined on the basis of the rate for deposits in Dollars for a period equal to such Interest Period commencing on the first day of such Interest Period appearing on Page 3750 of the Telerate screen as of 11:00 A.M., London time, two Business Days prior to the beginning of such Interest Period. In the event that such rate does not appear on Page 3750 of the Telerate screen (or otherwise on such screen), the "*Eurodollar Base Rate*" shall be determined by reference to such other comparable publicly available service for displaying eurodollar rates as may be selected by the Administrative Agent or, in the absence of such availability, by reference to the rate at which the Administrative Agent is offered Dollar deposits at or about 11:00 A.M., New York City time, two Business Days prior to the beginning of such Interest Period in the interbank eurodollar market where its eurodollar and foreign currency and exchange operations are then being conducted for delivery on the first day of such Interest Period for the number of days comprised therein.

"*Eurodollar Loans*": Loans the rate of interest applicable to which is based upon the Eurodollar Rate.

"*Eurodollar Rate*": with respect to each day during each Interest Period pertaining to a Eurodollar Loan, a rate per annum determined for such day in accordance with the following formula (rounded upward to the nearest 1/100th of 1%):

$$\frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurocurrency Reserve Requirements}}$$

"*Eurodollar Tranche*": the collective reference to Eurodollar Loans under a particular Facility the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

"*Event of Default*": any of the events specified in Section 8.1, *provided* that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"*Excess Cash Flow*": for any Fiscal Year of the Borrower, the excess, if any, of (a) the sum, without duplication, of (i) Consolidated Net Income for such Fiscal Year, (ii) the amount of all non-cash charges (including depreciation and amortization) deducted in arriving at such Consolidated Net Income, (iii) decreases in Consolidated Working Capital for such Fiscal Year, and (iv) the aggregate net amount of non-cash loss on the Disposition of property by the Borrower and its Subsidiaries during such Fiscal Year (other than sales of inventory in the ordinary course of business), to the extent deducted in arriving at such Consolidated Net Income *over* (b) the sum, without duplication, of (i) the amount of all non-cash credits included in arriving at such Consolidated Net Income, (ii) the aggregate amount actually paid by the Borrower and its Subsidiaries in cash during such Fiscal Year on account of Capital Expenditures (excluding the principal amount of Indebtedness incurred in connection with such expenditures and any such expenditures financed with the proceeds of any Reinvestment Deferred Amount) to the extent permitted to be made under this Agreement, (iii) the aggregate amount of all

prepayments of Revolving Loans, Canadian Revolving Loans, Additional Revolving Loans and Swingline Loans during such Fiscal Year to the extent accompanying permanent optional reductions of the Revolving Commitments, or the Canadian Revolving Commitments, as the case may be, and all optional prepayments of the Term Loans during such Fiscal Year, (iv) the aggregate amount of all regularly scheduled principal payments of Funded Debt (including the Term Loans) of the Borrower and its Subsidiaries made during such Fiscal Year (other than in respect of any revolving credit facility to the extent there is not an equivalent permanent reduction in commitments thereunder) to the extent permitted to be paid under this Agreement, (v) increases in Consolidated Working Capital for such Fiscal Year, and (vi) the aggregate net amount of non-cash gain on the Disposition of property by the Borrower and its Subsidiaries during such Fiscal Year (other than sales of inventory in the ordinary course of business), to the extent included in arriving at such Consolidated Net Income.

"*Excess Cash Flow Application Date*": as defined in Section 2.11(c).

"*Exchange Rate*": with respect to Canadian Dollars on a particular date, the rate at which such currency may be exchanged into Dollars, as set forth on such date as determined by the Administrative Agent on the applicable Reuters currency page with respect to such currency. In the event that such rate does not appear on the applicable Reuters currency page, the Exchange Rate with respect to such currency shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower or, in the absence of such agreement, such Exchange Rate shall instead be JPMorgan Chase Bank, N.A., Toronto Branch's spot rate of exchange in the London interbank or other market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about 10:00 a.m., local time, at such date for the purchase of Dollars with Canadian Dollars, for delivery two Business Days later; *provided*, that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent may use any reasonable method it deems appropriate to determine such rate, and such determination shall be conclusive absent manifest error.

"*Excluded Foreign Subsidiary*": the Canadian Borrower and any other Foreign Subsidiary in respect of which either (a) the pledge of any of the Capital Stock or any of the assets of such Subsidiary as Collateral or (b) the guaranteeing by such Subsidiary of the Obligations, would, in the good faith judgment of the Borrower, result in adverse tax consequences to the Borrower.

"*Existing Credit Agreement*": as defined in Section 5.1(b)(iv).

"*Existing Letter of Credit Issuer*": Bank of America, N.A.

"*Existing Letters of Credit*": the letters of credit set forth on Schedule 1.1E.

"*Existing Notes*": the 5% Convertible Subordinated Notes due 2008 of the Borrower.

"*Facility*": each of (a) the Tranche B Term Commitments and the Tranche B Term Loans made thereunder (the "*Tranche B Term Facility*"), (b) the Tranche C Term Commitments and the Tranche C Term Loans made thereunder (the "*Tranche C Term Facility*"), (c) the Revolving Commitments and the extensions of credit made thereunder (the "*Revolving Facility*") and (d) the Canadian Revolving Commitments and the extensions of credit made thereunder (the "*Canadian Revolving Facility*").

"*Federal Funds Effective Rate*": for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by JPMorgan Chase Bank, N.A. from three federal funds brokers of recognized standing selected by it.

"*Fee Payment Date*": (a) the third Business Day following the last day of each March, June, September and December and (b) the last day of the Revolving Commitment Period or the Tranche C Availability Period, as the case may be.

"*Financial Condition Covenants*": the covenants set forth in Section 7.1.

"*Fiscal Year*": the 12 monthly fiscal accounting periods described in Section 7.13.

"*Foreign Subsidiary*": any Subsidiary of the Borrower that is not a Domestic Subsidiary.

"*Funded Debt*": as to any Person, all Indebtedness of such Person that matures more than one year from the date of its creation or matures within one year from such date but is renewable or extendible, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including all current maturities and current sinking fund payments in respect of such Indebtedness whether or not required to be paid within one year from the date of its creation and, in the case of the Borrower or the Canadian Borrower, Indebtedness in respect of the Loans.

"*Funding Office*": with respect to the Borrower, the office of the Administrative Agent specified in Section 10.2 or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower or the Canadian Borrower, as the case may be, and the Lenders, and with respect to the Canadian Borrower, the office of the Canadian Revolving Lender set forth on Schedule 1.1D or, as relevant, the office of each Eligible Canadian Assignee set out in the Assignment and Assumption pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof.

"*GAAP*": generally accepted accounting principles in the United States as in effect from time to time, except that for purposes of Section 7.1, GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements referred to in Section 4.1(b). In the event that any "Accounting Change" (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then the Borrower, the Canadian Borrower and the Administrative Agent agree to enter into negotiations in order to amend such provisions of this Agreement so as to reflect equitably such Accounting Changes with the desired result that the criteria for evaluating the Borrower's financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Canadian Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. "Accounting Changes" refers to changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

"*Governmental Authority*": any nation or government, any state, province or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government.

"*Group Members*": the collective reference to Holdings, the Borrower, the Canadian Borrower and their respective Subsidiaries.

"*Guarantee and Collateral Agreement*": the Guarantee and Collateral Agreement to be executed and delivered by Holdings, the Borrower and each Subsidiary Guarantor, substantially in the form of Exhibit A.

"*Guarantee Obligation*": as to any Person (the "*guaranteeing person*"), any obligation, including a reimbursement, counterindemnity or similar obligation, of the guaranteeing Person that guarantees or in effect guarantees, or which is given to induce the creation of a separate obligation by another Person (including any bank under any letter of credit) that guarantees or in effect guarantees, any Indebtedness, leases, dividends or other obligations (the "*primary obligations*") of any other third Person (the "*primary obligor*") in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; *provided*, *however*, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

"*Guarantors*": the collective reference to Holdings and the Subsidiary Guarantors.

"*Holdings*": as defined in the preamble hereto.

"*Incurrence Ratio*": as at the last day of any period of four consecutive fiscal quarters, the maximum permitted Consolidated Leverage Ratio for such period as set forth in Section 7.1(a), with the numerator of such ratio decreased by 0.25.

"*Indebtedness*": of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of such Person's business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of acceptances, letters of credit, surety bonds or similar arrangements, (g) the liquidation value of all redeemable preferred Capital Stock of such Person, (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, and (j) for the purposes of Section 8.1(e) only, all obligations of such Person in respect of Swap Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

"*Insolvency*": with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

"*Insolvent*": pertaining to a condition of Insolvency.

"*Intellectual Property*": the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights and any registrations and applications for registration thereof, copyright licenses, patents and patent applications, patent licenses, trademarks and any registrations and applications for registration thereof, trademark licenses, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"*Interest Payment Date*": (a) as to any ABR Loan (other than any Swingline Loan) or any Canadian Prime Rate Loan, the last day of each March, June, September and December to occur while such Loan is outstanding and the final maturity date of such Loan, (b) as to any Eurodollar Loan having an Interest Period of three months or less, the last day of such Interest Period, (c) as to any Eurodollar Loan having an Interest Period longer than three months, each day that is three months, or a whole multiple thereof, after the first day of such Interest Period and the last day of such Interest Period, (d) as to any Canadian Cost of Funds Loan having an Interest Period of 90 days or less, the last day of such Interest Period, (e) as to any Canadian Cost of Funds Loan having an Interest Period longer than 90 days, each day that is three months, or a whole multiple thereof, after the first day of such Interest Period and the last day of such Interest Period, (f) as to any Loan (other than any Revolving Loan or Additional Revolving Loan that is an ABR Loan, any Swingline Loan and any Canadian Prime Rate Loan), the date of any repayment or prepayment made in respect thereof and (g) as to any Swingline Loan, the day that such Loan is required to be repaid.

"*Interest Period*": (a) as to any Eurodollar Loan, (i) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Eurodollar Loan and ending one, two, three or six months thereafter, as selected by the Borrower in its notice of borrowing or notice of conversion, as the case may be, given with respect thereto; and (ii) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan and ending one, two, three or six months thereafter, as selected by the Borrower by irrevocable notice to the Administrative Agent not later than 11:00 A.M., New York City time, on the date that is three Business Days prior to the last day of the then current Interest Period with respect thereto; and (b) as to any Canadian Cost of Funds Loan, (i) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Canadian Cost of Funds Loan and ending 30, 60, 90 or 180 days thereafter, as selected by the Canadian Borrower in its notice of borrowing or notice of conversion, as the case may be, given with respect thereto; and (ii) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Canadian Cost of Funds Loan and ending 30, 60, 90 or 180 days thereafter, as selected by the Canadian Borrower by irrevocable notice to the Administrative Agent not later than 11:00 A.M., New York City time, on the date that is three Business Days prior to the last day of the then current Interest Period with respect thereto; *provided* that, all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period with respect to a Eurodollar Loan would otherwise end on a day that is not a Business Day, or if any Interest Period with respect to a Canadian Cost of Funds Loan would otherwise end on a day that is not a Canadian Business Day, such Interest Period shall be extended to the next succeeding Business Day or Canadian Business Day, as applicable, unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day or Canadian Business Day, as applicable;

(ii) neither the Borrower nor the Canadian Borrower may select an Interest Period under a particular Facility that would extend beyond the Revolving Termination Date or beyond the date final payment is due on the Term Loans, as the case may be;

(iii) any Interest Period that begins on the last Business Day or Canadian Business Day, as applicable, of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day or Canadian Business Day, as applicable, of a calendar month; and

(iv) the Borrower and the Canadian Borrower shall select Interest Periods so as not to require a payment or prepayment of any Eurodollar Loan or any Canadian Cost of Funds Loan, as the case may be, during an Interest Period for such Loan.

"*Investments*": as defined in Section 7.8.

"*Issuing Lender*": JPMorgan Chase Bank, N.A. or any affiliate thereof, in its capacity as issuer of any Letter of Credit, and any other Lender selected by the Borrower to be an Issuing Lender with the consent of the Administrative Agent and such Lender, in such capacity.

"*L/C Commitment*": $20,000,000.

"*L/C Obligations*": at any time, an amount equal to the sum of (a) the aggregate then undrawn and unexpired amount of the then outstanding Letters of Credit and (b) the aggregate amount of drawings under Letters of Credit that have not then been reimbursed pursuant to Section 3.5.

"*L/C Participants*": the collective reference to all the Revolving Lenders other than the Issuing Lender.

"*Leasehold Mortgage*": as defined in Section 6.11.

"*Lenders*": as defined in the preamble hereto and shall include each Term Lender, Revolving Lender, Canadian Revolving Lender and Swingline Lender; *provided*, that unless the context otherwise requires, each reference herein to the Lenders shall be deemed to include any Conduit Lender.

"*Letters of Credit*": as defined in Section 3.1(a).

"*Lien*": with respect to any asset, any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including the interest of a vendor or a lessor under any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing).

"*Loan*": any loan made by any Lender pursuant to this Agreement.

"*Loan Documents*": this Agreement, the Security Documents, the Notes and any amendment, waiver, supplement or other modification to any of the foregoing.

"*Loan Parties*": each Group Member that is a party to a Loan Document.

"*Maintenance Capital Expenditures*": Capital Expenditures that are not New Unit Capital Expenditures.

"*Majority Facility Lenders*": with respect to any Facility, the holders of more than 50% of the aggregate unpaid principal amount of the Term Loans, the Total Revolving Extensions of Credit or the Total Canadian Revolving Extensions of Credit, as the case may be, outstanding under such Facility (or, in the case of the Tranche C Term Facility, the Revolving Facility and the Canadian Revolving Facility, prior to any termination of the Tranche C Term Commitments, the Revolving Commitments or the Canadian Revolving Commitments, as the case may be, the holders of more than 50% of the Total

Tranche C Term Commitments, the Total Revolving Commitments or the Total Canadian Revolving Commitments, as the case may be).

"*Material Adverse Effect*": a material adverse effect on (a) the business, property, operations, condition (financial or otherwise) or prospects of the Borrower and its Subsidiaries taken as a whole or (b) the validity or enforceability of this Agreement or any of the other Loan Documents or the rights or remedies of the Administrative Agent or the Lenders hereunder or thereunder.

"*Materials of Environmental Concern*": any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including asbestos, polychlorinated biphenyls and urea-formaldehyde insulation.

"*Merger*": the merger of Acquisition Sub with and into the Borrower, with the Borrower continuing as the surviving corporation, in accordance with the Acquisition Agreement.

"*Moody's*": Moody's Investors Service, Inc.

"*Mortgaged Properties*": the real properties listed on Schedule 1.1B, as to which the Administrative Agent for the benefit of the Lenders shall be granted a Lien pursuant to the Mortgages.

"*Mortgages*": each of the mortgages and deeds of trust made by any Loan Party in favor of, or for the benefit of, the Administrative Agent for the benefit of the Lenders, substantially in the form of Exhibit D (with such changes thereto as shall be advisable under the law of the jurisdiction in which such mortgage or deed of trust is to be recorded).

"*Multiemployer Plan*": a Plan that is a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"*New Unit Capital Expenditures*": Capital Expenditures related to the construction, acquisition or opening of new Units net of landlord reimbursements.

"*Net Cash Proceeds*": (a) in connection with any Asset Sale or any Recovery Event, the proceeds thereof in the form of cash and Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received), net of attorneys' fees, accountants' fees, investment banking fees, amounts required to be applied to the repayment of Indebtedness that is secured by a Lien expressly permitted hereunder on any asset that is the subject of such Asset Sale or Recovery Event (other than any Lien pursuant to a Security Document) or that is otherwise subject to mandatory prepayment, and other customary fees and expenses actually incurred in connection therewith and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements) and net of the amount of any reserves established to fund contingent liabilities estimated in good faith to be payable and that are directly attributable to such event (as determined reasonably and in good faith by the Chief Financial Officer of the Borrower), *provided*, that upon any termination of any such reserve, all amounts not paid-out in connection therewith shall be deemed to be "Net Cash Proceeds" of such Asset Sale, and (b) in connection with any issuance or sale of Capital Stock or any incurrence of Indebtedness, the cash proceeds (net of any Indebtedness to be refinanced with such proceeds) received from such issuance or incurrence, net of attorneys' fees, investment banking fees, accountants' fees, underwriting discounts and commissions and other customary fees and expenses actually incurred in connection therewith.

"*Non-Consenting Lender*": as defined in Section 2.22(b).

"*Non-Excluded Taxes*": as defined in Section 2.19(a).

"*Non-U.S. Person*": as defined in Section 2.19(d).

"*Notes*": the collective reference to any promissory note evidencing Loans.

"*Obligations*": the unpaid principal of and interest on (including interest accruing after the maturity of the Loans and Reimbursement Obligations and interest accruing after the filing of any petition or assignment in bankruptcy, or the commencement of any insolvency, reorganization, plan of arrangement or like proceeding, relating to the Borrower or the Canadian Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans and all other obligations and liabilities of the Borrower and the Canadian Borrower to the Administrative Agent or to any Lender (or, in the case of Specified Swap Agreements and Specified Cash Management Agreements, any affiliate of any Lender), whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document, the Letters of Credit, any Specified Swap Agreement, any Specified Cash Management Agreement or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including all fees, charges and disbursements of counsel to the Administrative Agent or to any Lender that are required to be paid by the Borrower or the Canadian Borrower pursuant hereto) or otherwise.

"*Other Taxes*": any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"*Participant*": as defined in Section 10.6(c).

"*PBGC*": the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

"*Permitted Acquisition*": the acquisition by the Borrower (whether of stock or of substantially all of the assets of a business or business division as a going concern or by means of a merger or consolidation) of a 100% interest in any other Person, provided that all of the following conditions shall have been satisfied: (a) such other Person shall operate a similar business to that of the Borrower's, (b) no Default or Event of Default shall have occurred and be continuing and none shall exist after giving effect thereto, (c) if the Borrower shall merge or amalgamate with such other Person, the Borrower shall be the surviving party of such merger or amalgamation, (d) if such Person shall become a Subsidiary of the Borrower, such new Subsidiary shall become a Subsidiary Guarantor pursuant to, and take all other actions required by, Section 6.9 hereof, (e) the Borrower shall have delivered to the Administrative Agent a Compliance Certificate (such Compliance Certificate to be distributed to the Lenders by the Administrative Agent) demonstrating, both immediately prior to and immediately after such acquisition, compliance on a pro forma basis with the covenants set forth in Section 7.1 hereof and (f) the aggregate amount expended by the Borrower and its Subsidiaries for all Permitted Acquisitions shall not exceed $10,000,000.

"*Permitted Cure Securities*": (a) any common equity security of Holdings and/or (b) any equity security of Holdings having no mandatory redemption, repurchase or similar requirements prior to 91 days after the date final payment is due on the Term Loans, and upon which all dividends or distributions (if any) shall be payable solely in additional shares of such equity security.

"*Permitted Investors*": the collective reference to the Sponsors and their Control Investment Affiliates.

"*Permitted Sale-Leaseback*": as defined in Section 7.11.

"*Permitted Senior Indebtedness*": unsecured senior (or subordinated) Indebtedness of the Borrower (i) the terms of which do not provide for any scheduled repayment, mandatory redemption or sinking

fund obligation prior to the date on which the final maturity of the Senior Notes occurs (as in effect on the Closing Date) and (ii) the covenant, default and remedy provisions of which are not materially more restrictive, and the mandatory prepayment, repurchase and redemption provisions of which are not materially more onerous or expansive in scope, taken as a whole, than those set forth in the Senior Note Indenture.

"*Person*": an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"*Plan*": at a particular time, any employee pension benefit plan (within in the meaning of Section 3(2) of ERISA) that is covered by ERISA and in respect of which the Borrower or a Commonly Controlled Entity is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"*Pricing Grid*": the table set forth below.

Consolidated Leverage Ratio	Applicable Margin for Eurodollar Loans	Applicable Margin for ABR Loans
Greater than or equal to 3.5:1.00	2.50%	1.50%
Less than 3.5:1.00	2.25%	1.25%

For the purposes of the Pricing Grid, changes in the Applicable Margin resulting from changes in the Consolidated Leverage Ratio shall become effective on the date (the "*Adjustment Date*") that is three Business Days after the date on which financial statements are delivered to the Lenders pursuant to Section 6.1 and shall remain in effect until the next change to be effected pursuant to this paragraph. If any financial statements referred to above are not delivered within the time periods specified in Section 6.1, then, until the date that is three Business Days after the date on which such financial statements are delivered, the higher rate set forth in each column of the Pricing Grid shall apply. In addition, at all times while an Event of Default shall have occurred and be continuing, the higher rate set forth in each column of the Pricing Grid shall apply. Each determination of the Consolidated Leverage Ratio pursuant to the Pricing Grid shall be made in a manner consistent with the determination thereof pursuant to Section 7.1.

"*Pro Forma Balance Sheet*": as defined in Section 4.1(a).

"*Pro Forma Leverage Ratio*": as at the Closing Date, the ratio of (a) Adjusted Debt on such date to (b) Adjusted EBITDAR for the 12-month period ended on the date of the most recent available quarterly or annual financial statements of the Borrower.

"*Projections*": as defined in Section 6.2(c).

"*Properties*": as defined in Section 4.17(a).

"*Real Estate*": all real property at any time owned or leased (as lessee or sublessee) by the Borrower or its Subsidiaries.

"*Recovery Event*": any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of any Group Member.

"*Refunded Swingline Loans*": as defined in Section 2.7.

"*Register*": as defined in Section 10.6(b).

"*Regulation S-X*": Regulation S-X of the Securities Act of 1933, as amended.

"*Regulation U*": Regulation U of the Board as in effect from time to time.

"*Reimbursement Obligation*": the obligation of the Borrower to reimburse the Issuing Lender pursuant to Section 3.5 for amounts drawn under Letters of Credit.

"*Reinvestment Deferred Amount*": with respect to any Reinvestment Event, the aggregate Net Cash Proceeds received by any Group Member in connection therewith that are not applied to prepay the Term Loans pursuant to Section 2.11(b) as a result of the delivery of a Reinvestment Notice.

"*Reinvestment Event*": any Asset Sale or Recovery Event in respect of which the Borrower has delivered a Reinvestment Notice.

"*Reinvestment Notice*": a written notice executed by a Responsible Officer stating that no Event of Default has occurred and is continuing and that the Borrower (directly or indirectly through a Subsidiary) intends and expects to use all or a specified portion of the Net Cash Proceeds of an Asset Sale or Recovery Event to acquire or repair assets useful in its business.

"*Reinvestment Prepayment Amount*": with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to acquire or repair assets useful in the Borrower's business.

"*Reinvestment Prepayment Date*": with respect to any Reinvestment Event, the earlier of (a) the date occurring 365 days after such Reinvestment Event and (b) the date on which the Borrower shall have determined not to, or shall have otherwise ceased to, acquire or repair assets useful in the Borrower's business with all or any portion of the relevant Reinvestment Deferred Amount.

"*Reorganization*": with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

"*Reportable Event*": any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the thirty day notice period is waived under subsections .27, .28, .29, .30, .31, .32, .34 or .35 of PBGC Reg. § 4043.

"*Required Lenders*": at any time, the holders of more than 50% of (a) until the Closing Date, the Commitments then in effect and (b) thereafter, the sum of (i) the aggregate unpaid principal amount of the Tranche B Term Loans then outstanding, (ii) the Total Tranche C Term Commitments then in effect or, if the Tranche C Term Commitments have been terminated, the aggregate unpaid principal amount of the Tranche C Term Loans then outstanding, (iii) the Total Revolving Commitments then in effect or, if the Revolving Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding and (iv) the Total Canadian Revolving Commitments then in effect or, if the Canadian Revolving Commitments have been terminated, the Total Canadian Revolving Extensions of Credit then outstanding.

"*Requirement of Law*": as to any Person, the Certificate of Incorporation and By-Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"*Reset Date*": the second Canadian Business Day following each Calculation Date; *provided* that, in connection with any Calculation Date designated pursuant to clause (b) of the definition thereof, the applicable Reset Date shall be such Calculation Date.

"*Responsible Officer*": the chief executive officer, president, chief financial officer or any vice president of the Borrower, but in any event, with respect to financial matters, the chief financial officer of the Borrower.

"*Restricted Payments*": as defined in Section 7.6.

"*Revolving Commitment*": as to any Revolving Lender, the obligation of such Lender, if any, to make Revolving Loans and participate in Swingline Loans and Letters of Credit in an aggregate principal and/or face amount not to exceed the amount set forth under the heading "Revolving Commitment" opposite such Lender's name on Schedule 1.1A or in the Assignment and Assumption pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The original amount of the Total Revolving Commitments is $55,000,000.

"*Revolving Commitment Period*": the period from and including the Closing Date to the Revolving Termination Date.

"*Revolving Extensions of Credit*": as to any Revolving Lender at any time, an amount equal to the sum of (a) the aggregate principal amount of all Revolving Loans held by such Lender then outstanding, (b) such Lender's Revolving Percentage of the L/C Obligations then outstanding and (c) such Lender's Revolving Percentage of the aggregate principal amount of Swingline Loans then outstanding.

"*Revolving Lender*": each Lender (other than the Canadian Revolving Lender) that has a Revolving Commitment or that holds Revolving Loans.

"*Revolving Loans*": as defined in Section 2.4(a).

"*Revolving Percentage*": as to any Revolving Lender at any time, the percentage which such Lender's Revolving Commitment then constitutes of the Total Revolving Commitments or, at any time after the Revolving Commitments shall have expired or terminated, the percentage which the aggregate principal amount of such Lender's Revolving Loans then outstanding constitutes of the aggregate principal amount of the Revolving Loans then outstanding, *provided*, that, in the event that the Revolving Loans are paid in full prior to the reduction to zero of the Total Revolving Extensions of Credit, the Revolving Percentages shall be determined in a manner designed to ensure that the other outstanding Revolving Extensions of Credit shall be held by the Revolving Lenders on a comparable basis.

"*Revolving Termination Date*": March 8, 2011.

"*S&P*": Standard & Poor's Ratings Services.

"*Sale-Leaseback*": as defined in Section 7.11.

"*Schedule I Reference Banks*": means collectively Bank of Montreal, The Bank of Nova Scotia, Canadian Imperial Bank of Commerce, Royal Bank of Canada and The Toronto-Dominion Bank and such one or more other Canadian banks identified in Schedule I to the Bank Act (Canada) as may from time to time be designated by the Administrative Agent, in consultation with the Canadian Borrower.

"*SEC*": the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

"*Security Documents*": the collective reference to the Guarantee and Collateral Agreement, the Mortgages, the Leasehold Mortgages and all other security documents hereafter delivered to the Administrative Agent granting a Lien on any property of any Person to secure the obligations and liabilities of any Loan Party under any Loan Document.

"*Senior Note Indenture*": the Indenture entered into by Holdings, the Borrower and certain of its Subsidiaries in connection with the issuance of the Senior Notes, together with all instruments and other agreements entered into by Holdings, the Borrower or such Subsidiaries in connection therewith.

"*Senior Notes*": the senior notes of the Borrower issued on the Closing Date pursuant to the Senior Note Indenture.

"*Significant Group Member*": (i) Holdings, (ii) the Borrower, (iii) the Canadian Borrower and (iv) any of their respective Subsidiaries accounting for more than 5% of the total assets or revenues of Holdings or the Borrower on a consolidated basis.

"*Single Employer Plan*": any Plan that is covered by Title IV of ERISA, but that is not a Multiemployer Plan.

"*Solvent*": when used with respect to any Person, means that, as of any date of determination, (a) the amount of the "present fair saleable value" of the assets of such Person will, as of such date, exceed the amount of all "liabilities of such Person, contingent or otherwise", as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person will be able to pay its debts as they mature. For purposes of this definition, (i) "debt" means liability on a "claim", and (ii) "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

"*Specified Cash Management Agreement*": any agreement providing for treasury, depositary or cash management services, including in connection with any automated clearing house transfers of funds or any similar transactions between the Borrower or any Guarantor and any Lender or Affiliate thereof.

"*Specified Change of Control*": a "Change of Control" (or any other defined term having a similar purpose) as defined in the Senior Note Indenture.

"*Specified Swap Agreement*": any Swap Agreement entered into by the Borrower or any Guarantor and any Lender or Affiliate thereof in respect of interest rates.

"*Sponsors*": Wellspring and HBK Investments, L.P.

"*Subsidiary*": as to any Person, a corporation, partnership (other than Sugarloaf), limited liability company or other entity of which more than 50% of the total shares of stock or other ownership interests or more than 50% of ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, Controlled or held by such Person, or the management of which is otherwise Controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

"*Subsidiary Guarantor*": each Subsidiary of the Borrower other than any Excluded Foreign Subsidiary.

"*Sugarloaf*": Sugarloaf Gwinnett Entertainment Company, L.P., a Delaware limited partnership.

"*Swap Agreement*": any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; *provided* that no phantom stock or similar plan providing for

payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or any of its Subsidiaries shall be a "Swap Agreement".

"*Swingline Commitment*": the obligation of the Swingline Lender to make Swingline Loans pursuant to Section 2.6 in an aggregate principal amount at any one time outstanding not to exceed $5,000,000.

"*Swingline Lender*": JPMorgan Chase Bank, N.A., in its capacity as the lender of Swingline Loans.

"*Swingline Loans*": as defined in Section 2.6.

"*Swingline Participation Amount*": as defined in Section 2.7.

"*Syndication Agent*": as defined in the preamble hereto.

"*Term Lenders*": the collective reference to the Tranche B Term Lenders and the Tranche C Term Lenders.

"*Term Loans*": the collective reference to the Tranche B Term Loans and the Tranche C Term Loans.

"*Total Canadian Revolving Commitments*": at any time, the aggregate amount of the Canadian Revolving Commitments then in effect.

"*Total Canadian Revolving Extensions of Credit*": at any time, the aggregate amount of the Canadian Revolving Extensions of Credit of the Canadian Revolving Lenders outstanding at such time.

"*Total Revolving Commitments*": at any time, the aggregate amount of the Revolving Commitments then in effect.

"*Total Revolving Extensions of Credit*": at any time, the aggregate amount of the Revolving Extensions of Credit of the Revolving Lenders outstanding at such time.

"*Total Tranche C Term Commitments*": at any time, the aggregate amount of the Tranche C Term Commitments then in effect.

"*Tranche B Term Commitment*": as to any Tranche B Lender, the obligation of such Lender, if any, to make a Tranche B Term Loan to the Borrower in a principal amount not to exceed the amount set forth under the heading "Tranche B Term Commitment" opposite such Lender's name on Schedule 1.1A. The original aggregate amount of the Tranche B Term Commitments is $50,000,000.

"*Tranche B Term Lender*": each Lender that has a Tranche B Term Commitment or that holds a Tranche B Term Loan.

"*Tranche B Term Loan*": as defined in Section 2.1(a).

"*Tranche B Term Percentage*": as to any Tranche B Term Lender at any time, the percentage which such Lender's Tranche B Term Commitment then constitutes of the aggregate Tranche B Term Commitments (or, at any time after the Closing Date, the percentage which the aggregate principal amount of such Lender's Tranche B Term Loans then outstanding constitutes of the aggregate principal amount of the Tranche B Term Loans then outstanding).

"*Tranche C Availability Period*": the period from and including the Closing Date to the date that is six months after the Closing Date.

"*Tranche C Funding Date*": the date on which the Tranche C Term Loans are made to the Borrower, as described in Section 2.1(b).

"*Tranche C Term Commitment*": as to any Tranche C Lender, the obligation of such Lender, if any, to make a Tranche C Term Loan to the Borrower in a principal amount not to exceed the amount set

forth under the heading "Tranche C Term Commitment" opposite such Lender's name on Schedule 1.1A. The original aggregate amount of the Tranche C Term Commitments is $50,000,000.

"*Tranche C Term Lender*": each Lender that has a Tranche C Term Commitment or that holds a Tranche C Term Loan.

"*Tranche C Term Loan*": as defined in Section 2.1(b).

"*Tranche C Term Percentage*": as to any Tranche C Term Lender at any time, the percentage which such Lender's Tranche C Term Commitment then constitutes of the aggregate Tranche C Term Commitments (or, at any time after the Tranche C Funding Date, the percentage which the aggregate principal amount of such Lender's Tranche C Term Loans then outstanding constitutes of the aggregate principal amount of the Tranche C Term Loans then outstanding).

"*Transferee*": any Assignee or Participant.

"*Type*": as to any Loan, its nature as an ABR Loan, a Eurodollar Loan, a Canadian Prime Rate Loan or a Canadian Cost of Funds Loan, as the case may be.

"*Unit*": a particular restaurant and/or entertainment center at a particular location that is owned or operated by the Borrower or one of its Subsidiaries or that is operated by a franchisee of the Borrower or one of its Subsidiaries.

"*United States*": the United States of America.

"*USD Equivalent*": with respect to an amount of Canadian Dollars on any date, the amount of Dollars that may be purchased with such amount of Canadian Dollars at the Exchange Rate in effect on such date.

"*Wellspring*": Wellspring Capital Management LLC.

"*Wholly Owned Subsidiary*": as to any Person, any other Person all of the Capital Stock of which (other than directors' qualifying shares required by law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

"*Wholly Owned Subsidiary Guarantor*": any Subsidiary Guarantor that is a Wholly Owned Subsidiary of the Borrower.

1.2. *Other Definitional Provisions*. (a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, (i) accounting terms relating to any Group Member not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP, (ii) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation", (iii) the word "incur" shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words "incurred" and "incurrence" shall have correlative meanings), (iv) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Capital Stock, securities, revenues, accounts, leasehold interests and contract rights, and (v) references to agreements or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as amended, supplemented, restated or otherwise modified from time to time.

(c) The words "hereof", "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision

of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

SECTION 2. AMOUNT AND TERMS OF COMMITMENTS

2.1. *Term Commitments*. (a) Subject to the terms and conditions hereof, each Tranche B Term Lender severally agrees to make a term loan (a "*Tranche B Term Loan*") to the Borrower on the Closing Date in an amount not to exceed the amount of the Tranche B Term Commitment of such Lender. The Tranche B Term Loans may from time to time be Eurodollar Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 2.12.

(b) Subject to the terms and conditions hereof, each Tranche C Term Lender severally agrees to make a term loan (a "*Tranche C Term Loan*") to the Borrower on a single date during the Tranche C Availability Period (the "*Tranche C Funding Date*") in an amount not to exceed the amount of the Tranche C Term Commitment of such Lender. The Tranche C Term Loans may from time to time be Eurodollar Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 2.12.

2.2. *Procedure for Term Loan Borrowing*. The Borrower shall give the Administrative Agent irrevocable notice (which notice must be received by the Administrative Agent (a) in the case of Tranche B Term Loans, prior to 10:00 A.M., New York City time, one Business Day prior to the anticipated Closing Date and (b) in the case of Tranche C Term Loans, prior to 11:00 A.M., New York City time, (i) three Business Days prior to the requested Borrowing Date, in the case of Eurodollar Loans, or (ii) one Business Day prior to the requested Borrowing Date, in the case of ABR Loans), specifying (A) the amount and Type of Term Loans to be borrowed, (B) the requested Borrowing Date and (C) in the case of Eurodollar Loans, the respective amounts of each such Type of Loan and the respective lengths of the initial Interest Period therefor. The Tranche B Term Loans made on the Closing Date shall initially be ABR Loans and, unless otherwise agreed by the Administrative Agent in its sole discretion, no Tranche B Term Loan may be converted into or continued as a Eurodollar Loan having an Interest Period in excess of one month prior to the date that is 30 days after the Closing Date. Upon receipt of such notice the Administrative Agent shall promptly notify each relevant Term Lender thereof. Not later than 12:00 Noon, New York City time, on the Borrowing Date requested by the Borrower each relevant Term Lender shall make available to the Administrative Agent at the Funding Office an amount in immediately available funds equal to the Term Loan or Term Loans to be made by such Lender. The Administrative Agent shall credit the account of the Borrower on the books of such office of the Administrative Agent with the aggregate of the amounts made available to the Administrative Agent by the Term Lenders in immediately available funds.

2.3 Repayment of Term Loans. (a) The Tranche B Term Loan of each Lender shall mature in 28 consecutive quarterly installments, each of which shall be in an amount equal to such Lender's Tranche B Term Percentage multiplied by the percentage set forth below opposite such installment of the aggregate principal amount of Tranche B Term Loans made on the Closing Date:

Installment	Percentage
June 30, 2006	0.25%
September 30, 2006	0.25%
December 31, 2006	0.25%
March 31, 2007	0.25%
June 30, 2007	0.25%
September 30, 2007	0.25%

December 31, 2007	0.25%
March 31, 2008	0.25%
June 30, 2008	0.25%
September 30, 2008	0.25%
December 31, 2008	0.25%
March 31, 2009	0.25%
June 30, 2009	0.25%
September 30, 2009	0.25%
December 31, 2009	0.25%
March 31, 2010	0.25%
June 30, 2010	0.25%
September 30,2010	0.25%
December 31, 2010	0.25%
March 31, 2011	0.25%
June 30, 2011	0.25%
September 30, 2011	0.25%
December 31, 2011	0.25%
March 31, 2012	0.25%
June 30, 2012	23.50%
September 30, 2012	23.50%
December 31, 2012	23.50%
March 8, 2013	23.50%

(b) The Tranche C Term Loan of each Lender shall mature in 28 consecutive quarterly installments, each of which shall be in an amount equal to such Lender's Tranche C Term Percentage multiplied by the percentage set forth below opposite such installment of the aggregate principal amount of Tranche C Term Loans made on the Tranche C Funding Date:

Installment	**Percentage**
June 30, 2006	0.25%
September 30, 2006	0.25%
December 31, 2006	0.25%
March 31, 2007	0.25%
June 30, 2007	0.25%
September 30, 2007	0.25%
December 31, 2007	0.25%
March 31, 2008	0.25%
June 30, 2008	0.25%
September 30, 2008	0.25%
December 31, 2008	0.25%
March 31, 2009	0.25%
June 30, 2009	0.25%
September 30, 2009	0.25%
December 31, 2009	0.25%
March 31, 2010	0.25%
June 30, 2010	0.25%
September 30,2010	0.25%
December 31, 2010	0.25%
March 31, 2011	0.25%
June 30, 2011	0.25%

September 30, 2011	0.25%
December 31, 2011	0.25%
March 31, 2012	0.25%
June 30, 2012	23.50%
September 30, 2012	23.50%
December 31, 2012	23.50%
March 8, 2013	23.50%

; *provided*, *however*, that notwithstanding the foregoing, if the Tranche C Funding Date occurs after June 30, 2006, then the Tranche C Term Loans shall mature in 27 consecutive quarterly installments, commencing on September 30, 2006, as set forth above, *provided* that the final four installments shall be increased to 23.5625% of the aggregate principal amount of Tranche C Term Loans made on the Tranche C Funding Date.

2.4. *Revolving Commitments*. (a) Subject to the terms and conditions hereof, each Revolving Lender severally agrees to make revolving credit loans ("*Revolving Loans*") to the Borrower in Dollars from time to time during the Revolving Commitment Period in an aggregate principal amount at any one time outstanding which, when added to such Lender's Revolving Percentage of the sum of (i) the L/C Obligations then outstanding and (ii) the aggregate principal amount of the Swingline Loans then outstanding, does not exceed the amount of such Lender's Revolving Commitment. During the Revolving Commitment Period, the Borrower may use the Revolving Commitments by borrowing, prepaying the Revolving Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. The Revolving Loans may from time to time be Eurodollar Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.5(a) and 2.12.

(b) The Borrower shall repay all outstanding Revolving Loans on the Revolving Termination Date.

2.4A. *Canadian Revolving Commitments; Additional Revolving Loans*. (a) Subject to the terms and conditions hereof, each Canadian Revolving Lender severally agrees to make (i) revolving credit loans ("*Canadian Revolving Loans*") to the Canadian Borrower in Canadian Dollars and (ii) revolving credit loans ("*Additional Revolving Loans*") to the Borrower in Dollars from time to time during the Revolving Commitment Period in an aggregate principal amount at any one time outstanding (USD Equivalent) which does not exceed the amount of such Lender's Canadian Revolving Commitment. During the Revolving Commitment Period, the Canadian Borrower and the Borrower may use the Canadian Revolving Commitments by borrowing, prepaying the Canadian Revolving Loans and the Additional Revolving Loans, as the case may be, in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. The Canadian Revolving Loans may from time to time be Canadian Prime Rate or Canadian Cost of Funds Loans, as determined by the Canadian Borrower and notified to the Administrative Agent in accordance with Sections 2.5(b) and 2.12. The Additional Revolving Loans may from time to time be Eurodollar Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.5(c) and 2.12.

(b) The Canadian Borrower shall repay all outstanding Canadian Revolving Loans on the Revolving Termination Date.

(c) The Borrower shall repay all outstanding Additional Revolving Loans on the Revolving Termination Date.

2.5. *Procedure for Revolving Loan Borrowing; Currency Fluctuation Matters.* (a) The Borrower may borrow under the Revolving Commitments during the Revolving Commitment Period on any Business Day, *provided* that the Borrower shall give the Administrative Agent irrevocable notice (which notice must be received by the Administrative Agent prior to 11:00 A.M., New York City time, (i) three

Business Days prior to the requested Borrowing Date, in the case of Eurodollar Loans, or (ii) one Business Day prior to the requested Borrowing Date, in the case of ABR Loans) (*provided* that any such notice of a borrowing of ABR Loans under the Revolving Facility to finance payments required by Section 3.5 may be given not later than 10:00 A.M., New York City time, on the date of the proposed borrowing), specifying (A) the amount and Type of Revolving Loans to be borrowed, (B) the requested Borrowing Date and (C) in the case of Eurodollar Loans, the respective amounts of each such Type of Loan and the respective lengths of the initial Interest Period therefor. Any Revolving Loans made on the Closing Date shall initially be ABR Loans and, unless otherwise agreed by the Administrative Agent in its sole discretion, no Revolving Loan may be made as, converted into or continued as a Eurodollar Loan having an Interest Period in excess of one month prior to the date that is 30 days after the Closing Date. Each borrowing under the Revolving Commitments shall be in an amount equal to (x) in the case of ABR Loans, $1,000,000 or a whole multiple of $500,000 in excess thereof (or, if the then aggregate Available Revolving Commitments are less than $1,000,000, such lesser amount) and (y) in the case of Eurodollar Loans, $1,000,000 or a whole multiple of $500,000 in excess thereof (or, if the then aggregate Available Revolving Commitments are less than $1,000,000, such lesser amount); *provided*, that the Swingline Lender may request, on behalf of the Borrower, borrowings under the Revolving Commitments that are ABR Loans in other amounts pursuant to Section 2.7. Upon receipt of any such notice from the Borrower, the Administrative Agent shall promptly notify each Revolving Lender thereof. Each Revolving Lender will make the amount of its *pro rata* share of each borrowing available to the Administrative Agent for the account of the Borrower at the Funding Office prior to 12:00 Noon, New York City time, on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrower by the Administrative Agent crediting the account of the Borrower on the books of such office with the aggregate of the amounts made available to the Administrative Agent by the Revolving Lenders and in like funds as received by the Administrative Agent.

(b) The Canadian Borrower may borrow under the Canadian Revolving Commitments during the Revolving Commitment Period on any Canadian Business Day, *provided* that the Canadian Borrower shall give the Administrative Agent irrevocable notice (which notice must be received by the Administrative Agent prior to 11:00 A.M., New York City time, three Canadian Business Days prior to the requested Borrowing Date) specifying (A) the amount in Canadian Dollars and Type of Canadian Revolving Loans to be borrowed, (B) the requested Borrowing Date and (C) in the case of Canadian Cost of Funds Loans, the respective amounts of each such Type of Loan and the respective lengths of the initial Interest Period therefor. Any Canadian Revolving Loans made on the Closing Date shall initially be Canadian Prime Rate Loans and, unless otherwise agreed by the Administrative Agent in its sole discretion, no Canadian Revolving Loan may be made as, converted into or continued as a Canadian Cost of Funds Loan having an Interest Period in excess of 30 days prior to the date that is 30 days after the Closing Date. Each borrowing of Canadian Revolving Loans under the Canadian Revolving Commitments shall be in an amount equal to (x) in the case of Canadian Prime Rate Loans, C$250,000 or a whole multiple of C$100,000 in excess thereof (or, if the then aggregate Available Canadian Revolving Commitments are less than C$250,000, such lesser amount) and (y) in the case of Canadian Cost of Funds Loans, C$250,000 or a whole multiple of C$100,000 in excess thereof (or, if the then aggregate Available Canadian Revolving Commitments are less than C$250,000, such lesser amount). Upon receipt of any such notice from the Canadian Borrower, the Administrative Agent shall promptly notify each Canadian Revolving Lender thereof. Each Canadian Revolving Lender will make the amount of its *pro rata* share of each borrowing available to the Administrative Agent for the account of the Canadian Borrower at the Funding Office prior to 12:00 Noon, New York City time, on the Borrowing Date requested by the Canadian Borrower in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Canadian Borrower by the Administrative Agent crediting the account of the Canadian Borrower on the books of such office with

the aggregate of the amounts made available to the Administrative Agent by the Canadian Revolving Lenders and in like funds as received by the Administrative Agent.

(c) The Borrower may borrow under the Canadian Revolving Commitments during the Revolving Commitment Period on any Business Day, *provided* that the Borrower shall give the Administrative Agent irrevocable notice (which notice must be received by the Administrative Agent prior to 11:00 A.M., New York City time, (i) three Business Days prior to the requested Borrowing Date, in the case of Eurodollar Loans, or (ii) one Business Day prior to the requested Borrowing Date, in the case of ABR Loans), specifying (A) the amount and Type of Additional Revolving Loans to be borrowed, (B) the requested Borrowing Date and (C) in the case of Eurodollar Loans, the respective amounts of each such Type of Loan and the respective lengths of the initial Interest Period therefor. Any Additional Revolving Loans made on the Closing Date shall initially be ABR Loans and, unless otherwise agreed by the Administrative Agent in its sole discretion, no Additional Revolving Loan may be made as, converted into or continued as a Eurodollar Loan having an Interest Period in excess of one month prior to the date that is 30 days after the Closing Date. Each borrowing of Additional Revolving Loans under the Canadian Revolving Commitments shall be in an amount equal to (x) in the case of ABR Loans, $1,000,000 or a whole multiple of $500,000 in excess thereof (or, if the then aggregate Available Canadian Revolving Commitments are less than $1,000,000, such lesser amount) and (y) in the case of Eurodollar Loans, $1,000,000 or a whole multiple of $500,000 in excess thereof (or, if the then aggregate Available Canadian Revolving Commitments are less than $1,000,000, such lesser amount). Upon receipt of any such notice from the Borrower, the Administrative Agent shall promptly notify each Canadian Revolving Lender thereof. The U.S. Affiliate of each Canadian Revolving Lender will make the amount of its *pro rata* share of each borrowing available to the Administrative Agent for the account of the Borrower at the Funding Office prior to 12:00 Noon, New York City time, on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrower by the Administrative Agent crediting the account of the Borrower on the books of such office with the aggregate of the amounts made available to the Administrative Agent by the U.S. Affiliate of the Canadian Revolving Lenders and in like funds as received by the Administrative Agent.

(d) With respect to each borrowing of Canadian Revolving Loans, not later than 11:00 a.m., New York City time, on the second Canadian Business Day preceding the Borrowing Date with respect to such Canadian Revolving Loan, the Administrative Agent shall determine the Exchange Rate as of such date and give notice thereof to the Canadian Borrower and the Canadian Revolving Lenders. The Exchange Rate so determined shall become effective on such Borrowing Date for the purposes of determining the availability under the Canadian Revolving Commitments (it being understood that such availability shall be calculated and determined by applying such Exchange Rate to the aggregate principal amount of Canadian Revolving Loans which are outstanding on such Borrowing Date).

(e) With respect to each borrowing of Additional Revolving Loans at a time when Canadian Revolving Loans are outstanding, not later than 11:00 a.m., New York City time, on the second Business Day preceding the Borrowing Date (or, in the case of an ABR Loan, promptly on the Borrowing Date) with respect to such Additional Revolving Loan, the Administrative Agent shall determine the Exchange Rate as of such date and give notice thereof to the Borrower and the Canadian Revolving Lenders. The Exchange Rate so determined shall become effective on such Borrowing Date for the purposes of determining the availability under the Canadian Revolving Commitments (it being understood that such availability shall be calculated and determined by applying such Exchange Rate to the aggregate principal amount of Canadian Revolving Loans which are outstanding on such Borrowing Date).

(f) Not later than 2:00 p.m., New York City time, on each Calculation Date (so long as any Canadian Revolving Loans are outstanding), the Administrative Agent shall determine the Exchange Rate as of such Calculation Date and give notice thereof to the Borrower, the Canadian Borrower and

the Canadian Revolving Lenders. The Exchange Rate so determined shall become effective on the next succeeding Reset Date. If, on any Reset Date, the Total Canadian Revolving Extensions of Credit exceed an amount equal to 105% of the Total Canadian Revolving Commitments, then the Canadian Borrower and/or the Borrower, as the case may be, shall, within three Canadian Business Days (or Business Days, as applicable) after notice thereof from the Administrative Agent, or so long as no Default or Event of Default has occurred and is continuing, with respect to any Canadian Cost of Funds Loans or Eurodollar Loans to be prepaid, on the next applicable Interest Payment Date, prepay Canadian Revolving Loans and/or Additional Revolving Loans in an amount such that, after giving effect thereto, the Total Canadian Revolving Extensions of Credit do not exceed the Total Canadian Revolving Commitments (such calculation to be made using the Exchange Rate that is effective on such Reset Date); *provided* that any such prepayment shall be accompanied by accrued interest on the amount prepaid (except in the case of Canadian Revolving Loans that are Canadian Prime Rate Loans or Additional Revolving Loans that are ABR Loans) but shall be without premium or penalty of any kind (other than any payments required under Section 2.20).

2.6. *Swingline Commitment*. (a) Subject to the terms and conditions hereof, the Swingline Lender agrees to make a portion of the credit otherwise available to the Borrower under the Revolving Commitments from time to time during the Revolving Commitment Period by making swing line loans ("*Swingline Loans*") to the Borrower; *provided* that (i) the aggregate principal amount of Swingline Loans outstanding at any time shall not exceed the Swingline Commitment then in effect (notwithstanding that the Swingline Loans outstanding at any time, when aggregated with the Swingline Lender's other outstanding Revolving Loans, may exceed the Swingline Commitment then in effect) and (ii) the Borrower shall not request, and the Swingline Lender shall not make, any Swingline Loan if, after giving effect to the making of such Swingline Loan, the aggregate amount of the Available Revolving Commitments would be less than zero. During the Revolving Commitment Period, the Borrower may use the Swingline Commitment by borrowing, repaying and reborrowing, all in accordance with the terms and conditions hereof. Swingline Loans shall be ABR Loans only.

(b) The Borrower shall repay to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earlier of the Revolving Termination Date and the first date after such Swingline Loan is made that is the 15th or last day of a calendar month and is at least two Business Days after such Swingline Loan is made; *provided* that on each date that a Revolving Loan is borrowed, the Borrower shall repay all Swingline Loans then outstanding.

2.7. *Procedure for Swingline Borrowing; Refunding of Swingline Loans*. (a) Whenever the Borrower desires that the Swingline Lender make Swingline Loans it shall give the Swingline Lender irrevocable telephonic notice confirmed promptly in writing (which telephonic notice must be received by the Swingline Lender not later than 1:00 P.M., New York City time, on the proposed Borrowing Date), specifying (i) the amount to be borrowed and (ii) the requested Borrowing Date (which shall be a Business Day during the Revolving Commitment Period). Each borrowing under the Swingline Commitment shall be in an amount equal to $500,000 or a whole multiple of $100,000 in excess thereof. Not later than 3:00 P.M., New York City time, on the Borrowing Date specified in a notice in respect of Swingline Loans, the Swingline Lender shall make available to the Administrative Agent at the Funding Office an amount in immediately available funds equal to the amount of the Swingline Loan to be made by the Swingline Lender. The Administrative Agent shall make the proceeds of such Swingline Loan available to the Borrower on such Borrowing Date by depositing such proceeds in the account of the Borrower with the Administrative Agent on such Borrowing Date in immediately available funds.

(b) The Swingline Lender, at any time and from time to time in its sole and absolute discretion may, on behalf of the Borrower (which hereby irrevocably directs the Swingline Lender to act on its behalf), on one Business Day's notice given by the Swingline Lender no later than 12:00 Noon, New York City time, request each Revolving Lender to make, and each Revolving Lender hereby

agrees to make, a Revolving Loan, in an amount equal to such Revolving Lender's Revolving Percentage of the aggregate amount of the Swingline Loans (the "*Refunded Swingline Loans*") outstanding on the date of such notice, to repay the Swingline Lender. Each Revolving Lender shall make the amount of such Revolving Loan available to the Administrative Agent at the Funding Office in immediately available funds, not later than 10:00 A.M., New York City time, one Business Day after the date of such notice. The proceeds of such Revolving Loans shall be immediately made available by the Administrative Agent to the Swingline Lender for application by the Swingline Lender to the repayment of the Refunded Swingline Loans. The Borrower irrevocably authorizes the Swingline Lender to charge the Borrower's accounts with the Administrative Agent (up to the amount available in each such account) in order to immediately pay the amount of such Refunded Swingline Loans to the extent amounts received from the Revolving Lenders are not sufficient to repay in full such Refunded Swingline Loans.

(c) If prior to the time a Revolving Loan would have otherwise been made pursuant to Section 2.7(b), one of the events described in Section 8.1(f) shall have occurred and be continuing with respect to the Borrower or if for any other reason, as determined by the Swingline Lender in its sole discretion, Revolving Loans may not be made as contemplated by Section 2.7(b), each Revolving Lender shall, on the date such Revolving Loan was to have been made pursuant to the notice referred to in Section 2.7(b), purchase for cash an undivided participating interest in the then outstanding Swingline Loans by paying to the Swingline Lender an amount (the "*Swingline Participation Amount*") equal to (i) such Revolving Lender's Revolving Percentage *times* (ii) the sum of the aggregate principal amount of Swingline Loans then outstanding that were to have been repaid with such Revolving Loans.

(d) Whenever, at any time after the Swingline Lender has received from any Revolving Lender such Lender's Swingline Participation Amount, the Swingline Lender receives any payment on account of the Swingline Loans, the Swingline Lender will distribute to such Lender its Swingline Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Lender's *pro rata* portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swingline Loans then due); *provided*, *however*, that in the event that such payment received by the Swingline Lender is required to be returned, such Revolving Lender will return to the Swingline Lender any portion thereof previously distributed to it by the Swingline Lender.

(e) Each Revolving Lender's obligation to make the Loans referred to in Section 2.7(b) and to purchase participating interests pursuant to Section 2.7(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such Revolving Lender or the Borrower may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other Revolving Lender or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

2.8. *Commitment Fees, etc*. (a) The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a commitment fee for the period from and including the date hereof to the last day of the Revolving Commitment Period, computed at the Commitment Fee Rate on the average daily amount of the Available Revolving Commitment of such Lender during the period for which payment is made, payable quarterly in arrears on each Fee Payment Date, commencing on the first such date to occur after the date hereof.

(b) The Canadian Borrower and the Borrower, jointly and severally, agree to pay to the Administrative Agent for the account of each Canadian Revolving Lender a commitment fee for the period from and including the date hereof to the last day of the Revolving Commitment Period, computed at the Commitment Fee Rate on the average daily amount of the Available Canadian Revolving Commitment of such Lender during the period for which payment is made, payable quarterly in arrears on each Fee Payment Date, commencing on the first such date to occur after the date hereof.

(c) The Borrower agrees to pay to the Administrative Agent for the account of each Tranche C Term Lender a commitment fee for the period from and including the date hereof to the last day of the Tranche C Availability Period, computed at the Commitment Fee Rate on the average daily unused amount of the Tranche C Term Commitment of such Lender during the period for which payment is made, payable quarterly in arrears on each Fee Payment Date, commencing on the first such date to occur after the date hereof.

(d) The Borrower agrees to pay to the Administrative Agent the fees in the amounts and on the dates as set forth in any fee agreements with the Administrative Agent and to perform any other obligations contained therein.

2.9. *Termination or Reduction of Revolving Commitments*. (a) The Borrower shall have the right, upon not less than three Business Days' notice to the Administrative Agent, to terminate the Revolving Commitments or, from time to time, to reduce the amount of the Revolving Commitments (without any reduction of the Canadian Revolving Commitments); *provided* that no such termination or reduction of Revolving Commitments shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Loans and Swingline Loans made on the effective date thereof, the Total Revolving Extensions of Credit would exceed the Total Revolving Commitments. Any such reduction shall be in an amount equal to $1,000,000, or a whole multiple of $500,000 in excess thereof, and shall reduce permanently the Revolving Commitments then in effect.

(b) The Borrower shall have the right, upon not less than three Business Days' notice to the Administrative Agent, to terminate the Tranche C Term Commitments or, from time to time, to reduce the amount of the Tranche C Term Commitments. Any such reduction shall be in an amount equal to $1,000,000, or a whole multiple of $500,000 in excess thereof, and shall reduce permanently the Tranche C Term Commitments then in effect.

(c) The Canadian Borrower and the Borrower shall have the right, upon not less than three Canadian Business Days' (or Business Days', as applicable) notice to the Administrative Agent, to terminate the Canadian Revolving Commitments or, from time to time, to reduce the amount of the Canadian Revolving Commitments (without any reduction of the Revolving Commitments); *provided* that no such termination or reduction of Canadian Revolving Commitments shall be permitted if, after giving effect thereto and to any prepayments of the Canadian Revolving Loans and the Additional Revolving Loans made on the effective date thereof, the Total Canadian Revolving Extensions of Credit would exceed the Total Canadian Revolving Commitments. Any such reduction shall be in an amount equal to $500,000, or a whole multiple of $100,000 in excess thereof, and shall reduce permanently the Canadian Revolving Commitments then in effect.

2.10. *Optional Prepayments*. (a) The Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent no later than 11:00 A.M., New York City time, three Business Days prior thereto, in the case of Eurodollar Loans, and no later than 11:00 A.M., New York City time, one Business Day prior thereto, in the case of ABR Loans, which notice shall specify the date and amount of prepayment and whether the prepayment is of Eurodollar Loans or ABR Loans; *provided*, that if a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.20. Upon receipt of any such notice the

Administrative Agent shall promptly notify each relevant Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of Revolving Loans or Additional Revolving Loans that are ABR Loans and Swingline Loans) accrued interest to such date on the amount prepaid. Partial prepayments of Term Loans, Revolving Loans and Additional Revolving Loans shall be in an aggregate principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof. Partial prepayments of Swingline Loans shall be in an aggregate principal amount of $100,000 or a whole multiple thereof.

(b) The Canadian Borrower may at any time and from time to time prepay the Canadian Revolving Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent no later than 11:00 A.M., New York City time, three Canadian Business Days prior thereto, in the case of Canadian Cost of Funds Loans, and no later than 11:00 A.M., New York City time, one Canadian Business Day prior thereto, in the case of Canadian Prime Rate Loans, which notice shall specify the date and amount of prepayment and whether the prepayment is of Canadian Cost of Funds Loans or Canadian Prime Rate Loans; *provided*, that if a Canadian Cost of Funds Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Canadian Borrower shall also pay any amounts owing pursuant to Section 2.20. Upon receipt of any such notice the Administrative Agent shall promptly notify the Canadian Revolving Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of Canadian Revolving Loans that are Canadian Prime Rate Loans) accrued interest to such date on the amount prepaid. Partial prepayments of Canadian Revolving Loans shall be in an aggregate principal amount of C$500,000 or a whole multiple of C$100,000 in excess thereof.

2.11. *Mandatory Prepayments*. (a) If any Indebtedness shall be issued or incurred by any Group Member (excluding any Indebtedness incurred in accordance with Section 7.2, other than paragraph (g) thereof), an amount equal to 100% of the Net Cash Proceeds thereof shall be applied on the date of such issuance or incurrence toward the prepayment of the Term Loans as set forth in Section 2.11(d).

(b) If on any date any Group Member shall receive Net Cash Proceeds from any Asset Sale or Recovery Event then, unless a Reinvestment Notice shall be delivered in respect thereof, such Net Cash Proceeds shall be applied within three (3) Business Days of such date toward the prepayment of the Term Loans as set forth in Section 2.11(d); *provided*, that, notwithstanding the foregoing, (i) the aggregate Net Cash Proceeds of Asset Sales and Recovery Events that may be excluded from the foregoing requirement pursuant to a Reinvestment Notice shall not exceed $5,000,000 in any Fiscal Year of the Borrower and (ii) on each Reinvestment Prepayment Date, an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event shall be applied toward the prepayment of the Term Loans as set forth in Section 2.11(d).

(c) If, for any Fiscal Year of the Borrower commencing with the Fiscal Year ending February 4, 2007 there shall be Excess Cash Flow, the Borrower shall, on the relevant Excess Cash Flow Application Date, apply the ECF Percentage of such Excess Cash Flow toward the prepayment of the Term Loans as set forth in Section 2.11(d). Each such prepayment shall be made on a date (an "*Excess Cash Flow Application Date*") no later than five days after the earlier of (i) the date on which the financial statements of the Borrower referred to in Section 6.1(a), for the Fiscal Year with respect to which such prepayment is made, are required to be delivered to the Lenders and (ii) the date such financial statements are actually delivered.

(d) Amounts to be applied in connection with prepayments made pursuant to Section 2.11 shall be applied to the prepayment of the Term Loans in accordance with Section 2.17(b). The application of any prepayment pursuant to Section 2.11 shall be made, *first*, to ABR Loans and, *second*, to Eurodollar Loans. Each prepayment of the Loans under Section 2.11 shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid.

(e) Notwithstanding the foregoing, if, prior to the Tranche C Funding Date, all Tranche B Term Loans shall have been prepaid, then the amount of any mandatory prepayment pursuant to this Section 2.11 that would have otherwise been applied to prepay the Tranche B Term Loans shall instead be applied to reduce permanently the Tranche C Term Commitments.

2.12. *Conversion and Continuation Options*. (a) The Borrower may elect from time to time to convert Eurodollar Loans to ABR Loans by giving the Administrative Agent prior irrevocable notice of such election no later than 11:00 A.M., New York City time, on the Business Day preceding the proposed conversion date, *provided* that any such conversion of Eurodollar Loans may only be made on the last day of an Interest Period with respect thereto. The Borrower may elect from time to time to convert ABR Loans to Eurodollar Loans by giving the Administrative Agent prior irrevocable notice of such election no later than 11:00 A.M., New York City time, on the third Business Day preceding the proposed conversion date (which notice shall specify the length of the initial Interest Period therefor), *provided* that no ABR Loan under a particular Facility may be converted into a Eurodollar Loan when any Event of Default has occurred and is continuing and the Administrative Agent or the Majority Facility Lenders in respect of such Facility have determined in its or their sole discretion not to permit such conversions. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

(b) Any Eurodollar Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving irrevocable notice to the Administrative Agent, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Loans, *provided* that no Eurodollar Loan under a particular Facility may be continued as such when any Event of Default has occurred and is continuing and the Administrative Agent has or the Majority Facility Lenders in respect of such Facility have determined in its or their sole discretion not to permit such continuations, and *provided*, *further*, that if the Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso such Loans shall be automatically converted to ABR Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

(c) The Canadian Borrower may elect from time to time to convert Canadian Cost of Funds Loans to Canadian Prime Rate Loans by giving the Administrative Agent prior irrevocable notice of such election no later than 11:00 A.M., New York City time, on the Canadian Business Day preceding the proposed conversion date, *provided* that any such conversion of Canadian Cost of Funds Loans may only be made on the last day of an Interest Period with respect thereto. The Canadian Borrower may elect from time to time to convert Canadian Prime Rate Loans to Canadian Cost of Funds Loans by giving the Administrative Agent prior irrevocable notice of such election no later than 11:00 A.M., New York City time, on the third Canadian Business Day preceding the proposed conversion date (which notice shall specify the length of the initial Interest Period therefor), *provided* that no Canadian Prime Rate Loan may be converted into a Canadian Cost of Funds Loan when any Event of Default has occurred and is continuing and the Administrative Agent or the Majority Facility Lenders in respect of the Canadian Revolving Facility have determined in its or their sole discretion not to permit such conversions. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

(d) Any Canadian Cost of Funds Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Canadian Borrower giving irrevocable notice to the Administrative Agent, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Loans, *provided* that no Canadian Cost of Funds Loan may be continued as such when any Event of Default has occurred and is continuing and the Administrative Agent has or the Majority Facility Lenders in

respect of the Canadian Revolving Facility have determined in its or their sole discretion not to permit such continuations, and *provided*, *further*, that if the Canadian Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso such Loans shall be automatically converted to Canadian Prime Rate Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

2.13. *Limitations on Eurodollar Tranches and CCOF Tranches*. Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions and continuations of Eurodollar Loans or Canadian Cost of Funds Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that, (a) after giving effect thereto, the aggregate principal amount of (i) the Eurodollar Loans comprising each Eurodollar Tranche shall be equal to $1,000,000 or a whole multiple of $500,000 in excess thereof and (ii) the Canadian Cost of Funds Loans comprising each CCOF Tranche shall be equal to C$500,000 or a whole multiple of C$100,000 in excess thereof and (b) no more than ten Eurodollar Tranches and five CCOF Tranches shall be outstanding at any one time.

2.14. *Interest Rates and Payment Dates*. (a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Eurodollar Rate determined for such day plus the Applicable Margin.

(b) Each ABR Loan shall bear interest at a rate per annum equal to the ABR plus the Applicable Margin.

(c) Each Canadian Revolving Loan that is a Canadian Prime Rate Loan shall bear interest at a rate per annum equal to the Canadian Prime Rate plus the Applicable Margin.

(d) Each Canadian Revolving Loan that is a Canadian Cost of Funds Loan shall bear interest at a rate per annum equal to the Canadian Cost of Funds Rate plus the Applicable Margin.

(e) (i) If all or a portion of the principal amount of any Loan or Reimbursement Obligation shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum equal to (x) in the case of the Loans, the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section *plus* 2% or (y) in the case of Reimbursement Obligations, the rate applicable to ABR Loans under the Revolving Facility *plus* 2%, and (ii) if all or a portion of any interest payable on any Loan or Reimbursement Obligation or any commitment fee or other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum equal to the rate then applicable to ABR Loans or Canadian Prime Rate Loans, as the case may be, under the relevant Facility *plus* 2% (or, in the case of any such other amounts that do not relate to a particular Facility, the rate then applicable to ABR Loans under the Revolving Facility *plus* 2%), in each case, with respect to clauses (i) and (ii) above, from the date of such non-payment until such amount is paid in full (as well after as before judgment).

(f) Interest shall be payable in arrears on each Interest Payment Date, *provided* that interest accruing pursuant to paragraph (e) of this Section shall be payable from time to time on demand.

2.15. *Computation of Interest and Fees*. (a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to ABR Loans the rate of interest on which is calculated on the basis of the Prime Rate and Canadian Prime Rate Loans, the interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Loan resulting from a change in the ABR or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change

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

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Canadian Borrower, as the case may be, and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Administrative Agent in determining any interest rate pursuant to Section 2.14(a) or Section 2.14(d).

(c) Wherever interest is calculated on the basis of a period which is less than the actual number of days in a calendar year, each rate of interest determined pursuant to such calculation, for the purposes of the Interest Act (Canada) is equivalent to such rate multiplied by the actual number of days in the calendar year in which such rate is to be ascertained and divided by the number of days used as the basis of that calculation.

2.16. *Inability to Determine Interest Rate*. If prior to the first day of any Interest Period:

(a) the Administrative Agent shall have determined (which determination shall be conclusive and binding upon the Borrower and the Canadian Borrower, as the case may be, in the absence of manifest error) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate or the Canadian Cost of Funds Rate for such Interest Period, or

(b) the Administrative Agent shall have received notice from the Majority Facility Lenders in respect of the relevant Facility that the Eurodollar Rate or the Canadian Cost of Funds Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lenders (as conclusively certified by such Lenders) of making or maintaining their affected Loans during such Interest Period,

the Administrative Agent shall give telecopy or telephonic notice thereof to the Borrower or the Canadian Borrower, as the case may be, and the relevant Lenders as soon as practicable thereafter. If such notice is given, (x) any Eurodollar Loans or Canadian Cost of Funds Loans under the relevant Facility requested to be made on the first day of such Interest Period shall be made as ABR Loans or Canadian Prime Rate Loans, respectively, (y) any Loans under the relevant Facility that were to have been converted on the first day of such Interest Period to Eurodollar Loans or Canadian Cost of Funds Loans shall be continued as ABR Loans or Canadian Prime Rate Loans, as the case may be, and (z) any outstanding Eurodollar Loans or Canadian Cost of Funds Loans under the relevant Facility shall be converted, on the last day of the then-current Interest Period, to ABR Loans or Canadian Prime Rate Loans, respectively. Until such notice has been withdrawn by the Administrative Agent, no further Eurodollar Loans or Canadian Cost of Funds Loans under the relevant Facility shall be made or continued as such, nor shall the Borrower or the Canadian Borrower, as the case may be, have the right to convert Loans under the relevant Facility to Eurodollar Loans or Canadian Cost of Funds Loans, as the case may be.

2.17. *Pro Rata Treatment and Payments*. (a) Each borrowing by the Borrower or the Canadian Borrower, as the case may be, from the Lenders hereunder, each payment by the Borrower or the Canadian Borrower, as the case may be, on account of any commitment fee and any reduction of the Commitments of the Lenders shall be made *pro rata* according to the respective Tranche B Term Percentages, Tranche C Term Percentages, Revolving Percentages or Canadian Revolving Percentages, as the case may be, of the relevant Lenders.

(b) Each payment (including each prepayment) by the Borrower on account of principal of and interest on the Term Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Term Loans then held by the Term Lenders. The amount of each principal prepayment of the Term Loans made pursuant to Section 2.10(a) shall be applied to reduce the then remaining

installments of the Tranche B Term Loans and Tranche C Term Loans, as the case may be, as directed by the Borrower. The amount of each principal prepayment of the Term Loans made pursuant to Section 2.11 shall be applied, *first*, to reduce the scheduled installments of the Tranche B Term Loans and Tranche C Term Loans, as the case may be, occurring within the next 12 months in the direct order of maturity and, *second*, to reduce the then remaining installments of the Tranche B Term Loans and Tranche C Term Loans, as the case may be, *pro rata* based upon the respective then remaining principal amounts thereof. Amounts prepaid on account of the Term Loans may not be reborrowed.

(c) Each payment (including each prepayment) by the Borrower or the Canadian Borrower, respectively, on account of principal of and interest on the Revolving Loans, the Canadian Revolving Loans and the Additional Revolving Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Revolving Loans, the Canadian Revolving Loans and the Additional Revolving Loans then held by the Revolving Lenders and the Canadian Revolving Lenders, respectively.

(d) All payments (including prepayments) to be made by the Borrower or the Canadian Borrower, as the case may be, hereunder, whether on account of principal, interest, fees or otherwise, shall be made without setoff or counterclaim and shall be made prior to 12:00 Noon, New York City time, on the due date thereof to the Administrative Agent, for the account of the relevant Lenders, at the Funding Office, in Dollars or Canadian Dollars, as the case may be, and in immediately available funds. The Administrative Agent shall distribute such payments to the relevant Lenders promptly upon receipt in like funds as received. If any payment hereunder (other than payments on the Eurodollar Loans or Canadian Cost of Funds Loans) becomes due and payable on a day other than a Business Day or a Canadian Business Day, as the case may be, such payment shall be extended to the next succeeding Business Day or Canadian Business Day, as the case may be. If any payment on a Eurodollar Loan or Canadian Cost of Funds Loan becomes due and payable on a day other than a Business Day or a Canadian Business Day, as the case may be, the maturity thereof shall be extended to the next succeeding Business Day or Canadian Business Day, as the case may be, unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day or Canadian Business Day, as the case may be. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

(e) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower or the Canadian Borrower, as the case may be, a corresponding amount. If such amount is not made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender shall pay to the Administrative Agent, on demand, such amount with interest thereon, at a rate equal to the greater of (i) the Federal Funds Effective Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, for the period until such Lender makes such amount immediately available to the Administrative Agent. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this paragraph shall be conclusive in the absence of manifest error. If such Lender's share of such borrowing is not made available to the Administrative Agent by such Lender within three Business Days after such Borrowing Date, the Administrative Agent shall also be entitled to recover such amount with interest thereon at the rate per annum applicable to ABR Loans or Canadian Prime Rate Loans, as the case may be, under the relevant Facility, on demand, from the Borrower or the Canadian Borrower, as the case may be.

(f) Unless the Administrative Agent shall have been notified in writing by the Borrower or the Canadian Borrower prior to the date of any payment due to be made by the Borrower or the Canadian

Borrower hereunder that the Borrower or the Canadian Borrower will not make such payment to the Administrative Agent, the Administrative Agent may assume that the Borrower or the Canadian Borrower is making such payment, and the Administrative Agent may, but shall not be required to, in reliance upon such assumption, make available to the Lenders their respective *pro rata* shares of a corresponding amount. If such payment is not made to the Administrative Agent by the Borrower or the Canadian Borrower within three Business Days or Canadian Business Days, as the case may be, after such due date, the Administrative Agent shall be entitled to recover, on demand, from each Lender to which any amount which was made available pursuant to the preceding sentence, such amount with interest thereon at the rate per annum equal to the daily average Federal Funds Effective Rate. Nothing herein shall be deemed to limit the rights of the Administrative Agent or any Lender against the Borrower or the Canadian Borrower.

2.18. *Requirements of Law*. (a) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof or compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority made subsequent to the date hereof:

(i) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender that is not otherwise included in the determination of the Eurodollar Rate or the Canadian Cost of Funds Rate; or

(ii) shall impose on such Lender any other condition;

and the result of any of the foregoing is to increase the cost to such Lender, by an amount that such Lender deems to be material, of making, converting into, continuing or maintaining Eurodollar Loans or Canadian Cost of Funds Loans or issuing or participating in Letters of Credit, or to reduce any amount receivable hereunder in respect thereof, then, in any such case, the Borrower or the Canadian Borrower, as the case may be, shall promptly pay such Lender, upon its demand, any additional amounts necessary to compensate such Lender for such increased cost or reduced amount receivable. If any Lender becomes entitled to claim any additional amounts pursuant to this paragraph, it shall promptly notify the Borrower or the Canadian Borrower, as the case may be, (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(b) If any Lender shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy or in the interpretation or application thereof or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority made subsequent to the date hereof shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of its obligations hereunder or under or in respect of any Letter of Credit to a level below that which such Lender or such corporation could have achieved but for such adoption, change or compliance (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy) by an amount deemed by such Lender to be material, then from time to time, after submission by such Lender to the Borrower or the Canadian Borrower, as the case may be, (with a copy to the Administrative Agent) of a written request therefor, the Borrower or the Canadian Borrower, as the case may be, shall pay to such Lender such additional amount or amounts as will compensate such Lender or such corporation for such reduction.

(c) A certificate as to any additional amounts payable pursuant to this Section submitted by any Lender to the Borrower or the Canadian Borrower, as the case may be, (with a copy to the Administrative Agent) shall be conclusive in the absence of manifest error. Notwithstanding anything to the contrary in this Section, the Borrower or the Canadian Borrower, as the case may be, shall not be required to compensate a Lender pursuant to this Section for any amounts incurred more than nine

months prior to the date that such Lender notifies the Borrower or the Canadian Borrower, as the case may be, of such Lender's intention to claim compensation therefor; *provided* that, if the circumstances giving rise to such claim have a retroactive effect, then such nine-month period shall be extended to include the period of such retroactive effect. The obligations of the Borrower or the Canadian Borrower, as the case may be, pursuant to this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

2.19. *Taxes*. (a) Each payment made by either the Borrower or the Canadian Borrower under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding income, branch profit and franchise taxes imposed on (or measured by) the net income or net profits of the Administrative Agent or any Lender as a result of a present or former connection between the Administrative Agent or such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from the Administrative Agent or such Lender having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any other Loan Document) ("*Excluded Taxes*"). If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings ("*Non-Excluded Taxes*") or Other Taxes are required to be withheld from any amounts payable to the Administrative Agent or any Lender hereunder, the amounts so payable to the Administrative Agent or such Lender shall be increased to the extent necessary to yield to the Administrative Agent or such Lender (after payment of all Non-Excluded Taxes and Other Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement, *provided*, *however*, that the Borrower and the Canadian Borrower shall not be required to increase any such amounts payable to the Administrative Agent or any Lender with respect to any Non-Excluded Taxes (i) that are attributable to the Administrative Agent's or such Lender's failure to comply with the requirements of paragraph (d), (e) or (i), where applicable, of this Section, (ii) that are United States withholding taxes imposed on amounts payable to the Administrative Agent or such Lender at the time the Administrative Agent or such Lender becomes a party to this Agreement except to the extent that such Lender's assignor (if any) was entitled, at the time of assignment, to receive additional amounts from the Borrower or the Canadian Borrower with respect to such Non-Excluded Taxes pursuant to this paragraph or (iii) that are United States withholding taxes imposed on amounts payable to the Administrative Agent or such Lender after the Administrative Agent or such Lender changes its lending office or other jurisdiction in which it receives payments from the Borrower or the Canadian Borrower (other than in accordance with Section 2.21) except to the extent that the Administrative Agent or such Lender was entitled, prior to the change in lending office, to receive additional amounts from the Borrower or the Canadian Borrower with respect to such Non-Excluded Taxes pursuant to this paragraph.

(b) In addition, the Borrower and the Canadian Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Whenever any Non-Excluded Taxes or Other Taxes are payable by the Borrower or the Canadian Borrower, as promptly as possible thereafter the Borrower or the Canadian Borrower shall send to the Administrative Agent for its own account or for the account of the relevant Lender, as the case may be, a copy (or, if reasonably available, a certified copy) of an original official receipt received by the Borrower or the Canadian Borrower showing payment thereof. If the Borrower or the Canadian Borrower fails to pay any Non-Excluded Taxes or Other Taxes when due to the appropriate taxing authority or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, the Borrower or the Canadian Borrower shall indemnify the Administrative Agent and the Lenders for any incremental taxes, interest or penalties that may become payable by the Administrative Agent or any Lender as a result of any such failure.

(d) Each Lender and Administrative Agent that is not a "U.S. Person" as defined in Section 7701(a)(30) of the Code (a "*Non-U.S. Person*") shall deliver to the Borrower and the Administrative Agent (or, in the case of a Participant, to the Lender from which the related participation shall have been purchased with copies to Borrower) two true, accurate and complete copies of either U.S. Internal Revenue Service Form W-8BEN, W-8IMY, W-8EXP, W-8ECI or any subsequent versions thereof or successors thereto or, in the case of a Non-U.S. Person claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", a statement substantially in the form of Exhibit G and a Form W-8BEN, or any subsequent versions thereof or successors thereto, properly completed and duly executed by such Non-U.S. Person claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by the Borrower under this Agreement and the other Loan Documents. Such forms shall be delivered by each Non-U.S. Person on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation). In addition, each Non-U.S. Person shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Person. Each Non-U.S. Person shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Non-U.S. Person shall not be required to deliver any form pursuant to this paragraph that such Non-U.S. Person is not legally able to deliver.

(e) A Lender or Administrative Agent that is entitled to an exemption from or reduction of non-U.S. withholding tax under the law of the jurisdiction in which the Borrower or the Canadian Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower or the Canadian Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrower or the Canadian Borrower, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate, *provided* that such Lender or Administrative Agent is legally entitled to complete, execute and deliver such documentation and in such Lender's or Administrative Agent's judgment such completion, execution or submission would not materially prejudice the legal position of such Lender or Administrative Agent.

(f) If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Non-Excluded Taxes or Other Taxes as to which it has been indemnified by the Borrower or the Canadian Borrower or with respect to which the Borrower or the Canadian Borrower has paid additional amounts pursuant to this Section 2.19, it shall pay over such refund to the Borrower or the Canadian Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or the Canadian Borrower under this Section 2.19 with respect to the Non-Excluded Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided*, that the Borrower and the Canadian Borrower, upon the request of the Administrative Agent or such Lender, agree to repay the amount paid over to the Borrower or the Canadian Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower, the Canadian Borrower or any other Person.

(g) The agreements in this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(h) Each Lender, other than a Non-U.S. Person, and Administrative Agent (other than Persons that are corporations or otherwise exempt from United States backup withholding tax), shall deliver at the time(s) and in the manner(s) prescribed by applicable law, to the Borrower, the Canadian Borrower and Administrative Agent (or, in the case of a Participant, to the Lender from which the related participation shall have been purchased with copies to the Borrower and the Canadian Borrower), as applicable, a properly completed and duly executed U.S. Internal Revenue Service Form W-9 or any subsequent versions thereof or successors thereto, certifying under penalty of perjury that such Person is exempt from United States backup withholding tax on payments made hereunder.

2.20. *Indemnity*. Each of the Borrower and the Canadian Borrower agrees, jointly and severally, to indemnify each Lender for, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower or the Canadian Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans or Canadian Cost of Funds Loans, as the case may be, after the Borrower or the Canadian Borrower, as the case may be, has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower or the Canadian Borrower in making any prepayment of or conversion from Eurodollar Loans or Canadian Cost of Funds Loans, as the case may be, after the Borrower or the Canadian Borrower, as the case may be, has given a notice thereof in accordance with the provisions of this Agreement or (c) the making of a prepayment of Eurodollar Loans or Canadian Cost of Funds Loans, as the case may be, on a day that is not the last day of an Interest Period with respect thereto. Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) *over* (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. A certificate as to any amounts payable pursuant to this Section submitted to the Borrower or the Canadian Borrower, as the case may be, by any Lender shall be conclusive in the absence of manifest error. This covenant shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

2.21. *Change of Lending Office*. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.18 or 2.19(a) with respect to such Lender, it will, if requested by the Borrower or the Canadian Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Loans affected by such event with the object of avoiding the consequences of such event; *provided*, that such designation is made on terms that, in the sole judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal or regulatory disadvantage, and *provided*, *further*, that nothing in this Section shall affect or postpone any of the obligations of the Borrower or the Canadian Borrower or the rights of any Lender pursuant to Section 2.18 or 2.19(a).

2.22. *Replacement of Lenders*. (a) Each of the Borrower and the Canadian Borrower shall be permitted to replace any Lender that (a) requests reimbursement for amounts owing pursuant to Section 2.18 or 2.19(a) or (b) defaults in its obligation to make Loans hereunder, with a replacement financial institution; *provided* that (i) such replacement does not conflict with any Requirement of Law, (ii) no Event of Default shall have occurred and be continuing at the time of such replacement, (iii) prior to any such replacement, such Lender shall have taken no action under Section 2.21 so as to eliminate the continued need for payment of amounts owing pursuant to Section 2.18 or 2.19(a), (iv) the replacement financial institution shall purchase, at par, all Loans and other amounts owing to

such replaced Lender on or prior to the date of replacement, (v) the Borrower or the Canadian Borrower, as the case may be, shall be liable to such replaced Lender under Section 2.20 if any Eurodollar Loan or Canadian Cost of Funds Loan, as the case may be, owing to such replaced Lender shall be purchased other than on the last day of the Interest Period relating thereto, (vi) the replacement financial institution shall be reasonably satisfactory to the Administrative Agent, (vii) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 10.6 (provided that the Borrower or the Canadian Borrower, as the case may be, shall be obligated to pay the registration and processing fee referred to therein), (viii) until such time as such replacement shall be consummated, the Borrower or the Canadian Borrower, as the case may be, shall pay all additional amounts (if any) required pursuant to Section 2.18 or 2.19(a), as the case may be, and (ix) any such replacement shall not be deemed to be a waiver of any rights that the Borrower or the Canadian Borrower, as the case may be, the Administrative Agent or any other Lender shall have against the replaced Lender.

(b) If any Lender (such Lender, a "*Non-Consenting Lender*") has failed to consent to a proposed amendment or waiver which pursuant to the terms of Section 10.1 requires the consent of all Lenders or of all Lenders directly affected thereby and with respect to which the Required Lenders shall have granted their consent, then the Borrower or the Canadian Borrower, as the case may be, shall be permitted to replace such Non-Consenting Lender (unless such Non-Consenting Lender grants such consent); *provided* that (i) such replacement does not conflict with any Requirement of Law, (ii) no Event of Default shall have occurred and be continuing at the time of such replacement, (iii) the replacement financial institution shall purchase, at par, all Loans and other amounts owing to such replaced Lender on or prior to the date of replacement, (iv) the Borrower or the Canadian Borrower, as the case may be, shall be liable to such replaced Lender under Section 2.20 if any Eurodollar Loan or Canadian Cost of Funds Loan, as the case may be, owing to such replaced Lender shall be purchased other than on the last day of the Interest Period relating thereto, (v) the replacement financial institution shall be reasonably satisfactory to the Administrative Agent, (vi) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 10.6 (provided that the Borrower or the Canadian Borrower, as the case may be, shall be obligated to pay the registration and processing fee referred to therein), and (vii) any such replacement shall not be deemed to be a waiver of any rights that the Borrower or the Canadian Borrower, as the case may be, the Administrative Agent or any other Lender shall have against the replaced Lender.

SECTION 3. LETTERS OF CREDIT

3.1. *L/C Commitment.* (a) Subject to the terms and conditions hereof, the Issuing Lender, in reliance on the agreements of the other Revolving Lenders set forth in Section 3.4(a), agrees to issue letters of credit ("*Letters of Credit*") for the account of the Borrower on any Business Day during the Revolving Commitment Period in such form as may be approved from time to time by the Issuing Lender; *provided* that the Issuing Lender shall have no obligation to issue any Letter of Credit if, after giving effect to such issuance, (i) the L/C Obligations would exceed the L/C Commitment or (ii) the aggregate amount of the Available Revolving Commitments would be less than zero. Each Letter of Credit shall (i) be denominated in Dollars and (ii) expire no later than the earlier of (x) the first anniversary of its date of issuance and (y) the date that is five Business Days prior to the Revolving Termination Date, *provided* that any Letter of Credit with a one-year term may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (y) above).

(b) The Issuing Lender shall not at any time be obligated to issue any Letter of Credit if such issuance would conflict with, or cause the Issuing Lender or any L/C Participant to exceed any limits imposed by, any applicable Requirement of Law.

3.2. *Procedure for Issuance of Letter of Credit.* The Borrower may from time to time request that the Issuing Lender issue a Letter of Credit by delivering to the Issuing Lender at its address for notices specified herein an Application therefor, completed to the satisfaction of the Issuing Lender, and such other certificates, documents and other papers and information as the Issuing Lender may request. Upon receipt of any Application, the Issuing Lender will process such Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall promptly issue the Letter of Credit requested thereby (but in no event shall the Issuing Lender be required to issue any Letter of Credit earlier than three Business Days after its receipt of the Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed to by the Issuing Lender and the Borrower. The Issuing Lender shall furnish a copy of such Letter of Credit to the Borrower promptly following the issuance thereof. The Issuing Lender shall promptly furnish to the Administrative Agent, which shall in turn promptly furnish to the Lenders, notice of the issuance of each Letter of Credit (including the amount thereof).

3.3. *Fees and Other Charges.* (a) The Borrower will pay a fee on all outstanding Letters of Credit at a per annum rate equal to the Applicable Margin then in effect with respect to Eurodollar Loans under the Revolving Facility, shared ratably among the Revolving Lenders and payable quarterly in arrears on each Fee Payment Date after the issuance date. In addition, the Borrower shall pay to the Issuing Lender for its own account a fronting fee of 0.25% per annum on the undrawn and unexpired amount of each Letter of Credit, payable quarterly in arrears on each Fee Payment Date after the issuance date.

(b) In addition to the foregoing fees, the Borrower shall pay or reimburse the Issuing Lender for such normal and customary costs and expenses as are incurred or charged by the Issuing Lender in issuing, negotiating, effecting payment under, amending or otherwise administering any Letter of Credit.

3.4. *L/C Participations.* (a) The Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant, and, to induce the Issuing Lender to issue Letters of Credit, each L/C Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from the Issuing Lender, on the terms and conditions set forth below, for such L/C Participant's own account and risk an undivided interest equal to such L/C Participant's Revolving Percentage in the Issuing Lender's obligations and rights under and in respect of each Letter of Credit and the amount of each draft paid by the Issuing Lender thereunder. Each L/C Participant agrees with the Issuing Lender that, if a draft is paid under any Letter of Credit for which the Issuing Lender is not reimbursed in full by the Borrower in accordance with the terms of this Agreement, such L/C Participant shall pay to the Issuing Lender upon demand at the Issuing Lender's address for notices specified herein an amount equal to such L/C Participant's Revolving Percentage of the amount of such draft, or any part thereof, that is not so reimbursed. Each L/C Participant's obligation to pay such amount shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such L/C Participant may have against the Issuing Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other L/C Participant or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(b) If any amount required to be paid by any L/C Participant to the Issuing Lender pursuant to Section 3.4(a) in respect of any unreimbursed portion of any payment made by the Issuing Lender under any Letter of Credit is paid to the Issuing Lender within three Business Days after the date such

payment is due, such L/C Participant shall pay to the Issuing Lender on demand an amount equal to the product of (i) such amount, times (ii) the daily average Federal Funds Effective Rate during the period from and including the date such payment is required to the date on which such payment is immediately available to the Issuing Lender, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. If any such amount required to be paid by any L/C Participant pursuant to Section 3.4(a) is not made available to the Issuing Lender by such L/C Participant within three Business Days after the date such payment is due, the Issuing Lender shall be entitled to recover from such L/C Participant, on demand, such amount with interest thereon calculated from such due date at the rate per annum applicable to ABR Loans under the Revolving Facility. A certificate of the Issuing Lender submitted to any L/C Participant with respect to any amounts owing under this Section shall be conclusive in the absence of manifest error.

(c) Whenever, at any time after the Issuing Lender has made payment under any Letter of Credit and has received from any L/C Participant its *pro rata* share of such payment in accordance with Section 3.4(a), the Issuing Lender receives any payment related to such Letter of Credit (whether directly from the Borrower or otherwise, including proceeds of collateral applied thereto by the Issuing Lender), or any payment of interest on account thereof, the Issuing Lender will distribute to such L/C Participant its *pro rata* share thereof; *provided*, *however*, that in the event that any such payment received by the Issuing Lender shall be required to be returned by the Issuing Lender, such L/C Participant shall return to the Issuing Lender the portion thereof previously distributed by the Issuing Lender to it.

3.5. *Reimbursement Obligation of the Borrower*. If any draft is paid under any Letter of Credit, the Borrower shall reimburse the Issuing Lender for the amount of (a) the draft so paid and (b) any taxes, fees, charges or other costs or expenses incurred by the Issuing Lender in connection with such payment, not later than 12:00 Noon, New York City time, on (i) the Business Day that the Borrower receives notice of such draft, if such notice is received on such day prior to 10:00 A.M., New York City time, or (ii) if clause (i) above does not apply, the Business Day immediately following the day that the Borrower receives such notice. Each such payment shall be made to the Issuing Lender at its address for notices referred to herein in Dollars and in immediately available funds. Interest shall be payable on any such amounts from the date on which the relevant draft is paid until payment in full at the rate set forth in (x) until the Business Day next succeeding the date of the relevant notice, Section 2.14(b) and (y) thereafter, Section 2.14(e).

3.6. *Obligations Absolute*. The Borrower's obligations under this Section 3 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that the Borrower may have or have had against the Issuing Lender, any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees with the Issuing Lender that the Issuing Lender shall not be responsible for, and the Borrower's Reimbursement Obligations under Section 3.5 shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. The Issuing Lender shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Issuing Lender. The Borrower agrees that any action taken or omitted by the Issuing Lender under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of gross negligence or willful misconduct, shall be binding on the Borrower and shall not result in any liability of the Issuing Lender to the Borrower.

3.7. *Letter of Credit Payments*. If any draft shall be presented for payment under any Letter of Credit, the Issuing Lender shall promptly notify the Borrower of the date and amount thereof. The responsibility of the Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment are substantially in conformity with such Letter of Credit.

3.8. *Applications*. To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Section 3, the provisions of this Section 3 shall apply.

3.9. *Existing Letters of Credit*. On the Closing Date, all Existing Letters of Credit shall be deemed to have been issued under this Agreement and shall be outstanding hereunder and subject to all provisions contained herein and shall be deemed to be Letters of Credit, and the Existing Letter of Credit Issuer shall be deemed to be the Issuing Lender with respect to each Existing Letter of Credit.

SECTION 4. REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent and the Lenders to enter into this Agreement and to make the Loans and issue or participate in the Letters of Credit, Holdings, the Borrower and the Canadian Borrower hereby jointly and severally represent and warrant to the Administrative Agent and each Lender that:

4.1. *Financial Condition*. (a) The unaudited *pro forma* consolidated balance sheet of the Borrower and its consolidated Subsidiaries as at October 30, 2005 (including the notes thereto) (the "*Pro Forma Balance Sheet*"), copies of which have heretofore been furnished to each Lender, has been prepared giving effect (as if such events had occurred on such date) to (i) the consummation of the Acquisition, (ii) the Loans to be made and the Senior Notes to be issued on the Closing Date and the use of proceeds thereof and (iii) the payment of fees and expenses in connection with the foregoing. The Pro Forma Balance Sheet has been prepared based on the best information available to the Borrower as of the date of delivery thereof, and presents fairly on a *pro forma* basis the estimated financial position of Borrower and its consolidated Subsidiaries as at October 30, 2005, assuming that the events specified in the preceding sentence had actually occurred at such date.

(b) The audited consolidated balance sheets of the Borrower as at February 2, 2003, February 1, 2004 and January 30, 2005, and the related consolidated statements of income and of cash flows for the Fiscal Years ended on such dates, reported on by and accompanied by an unqualified report from Ernst & Young LLP, subject to the restatement of financial statements with respect to recognition of lease rental expenses, as described in the Borrower's Form 10-Q for the period ended October 30, 2005, present fairly the consolidated financial condition of the Borrower as at such date, and the consolidated results of its operations and its consolidated cash flows for the respective Fiscal Years then ended. The unaudited consolidated balance sheet of the Borrower as at October 30, 2005, and the related unaudited consolidated statements of income and cash flows for the nine-month period ended on such date, subject to the restatement of financial statements with respect to recognition of lease rental expenses, as described in the Borrower's Form 10-Q for the period ended October 30, 2005, present fairly the consolidated financial condition of the Borrower as at such date, and the consolidated results of its operations and its consolidated cash flows for the nine-month period then ended (subject to normal year-end audit adjustments). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the aforementioned firm of accountants and disclosed therein). No Group Member has any material Guarantee Obligations, contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph. During the period

from January 30, 2005 to and including the date hereof, except as disclosed on Schedule 4.1(b), there has been no Disposition by any Group Member of any material part of its business or property.

4.2. *No Change*. Since January 30, 2005, there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect.

4.3. *Existence; Compliance with Law*. Each Group Member (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other organization and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification and (d) is in compliance with all Requirements of Law, except, in the case of clauses (c) and (d), to the extent that the failure to be so qualified or to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.4. *Power; Authorization; Enforceable Obligations*. Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower and the Canadian Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower and the Canadian Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the Acquisition and the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (i) consents, authorizations, filings and notices described in Schedule 4.4, which consents, authorizations, filings and notices have been obtained or made and are in full force and effect and (ii) the filings referred to in Section 4.19. Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

4.5. *No Legal Bar*. The execution, delivery and performance of this Agreement and the other Loan Documents, the issuance of Letters of Credit, the borrowings hereunder and the use of the proceeds thereof will not violate any Requirement of Law in any material respect or any material Contractual Obligation of any Group Member and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such Contractual Obligation (other than the Liens created by the Security Documents).

4.6. *Litigation*. Except as disclosed in Schedule 4.6, no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of Holdings, the Borrower or the Canadian Borrower, threatened by or against any Group Member or against any of their respective properties or revenues (a) with respect to any of the Loan Documents or any of the transactions contemplated hereby or thereby, or (b) that could reasonably be expected to have a Material Adverse Effect.

4.7. *No Default*. No Group Member is in default under or with respect to any of its Contractual Obligations in any respect that could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

4.8. *Ownership of Property; Liens*. Each Group Member has good, sufficient and legal title in (in the case of fee interests in real property), or a valid leasehold interest in (in the case of leasehold interests in real property), all its real property, and good title to, or a valid leasehold interest in, all its other material personal property, and none of such property is subject to any Lien except as permitted by Section 7.3.

4.9. *Intellectual Property*. Each Group Member owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. Except as disclosed on Schedule 4.9, no material claim has been asserted in writing or proceeding pending by any Person challenging or questioning the use of any Intellectual Property owned or used by any Group Member or the validity or effectiveness of any Intellectual Property owned or used by any Group Member, nor does Holdings, the Borrower or the Canadian Borrower know of any valid basis for any such claim. To the knowledge of Holdings, the Borrower and the Canadian Borrower, the use of Intellectual Property by each Group Member does not infringe on the rights of any Person in any material respect.

4.10. *Taxes*. Each Group Member has filed or caused to be filed all Federal, state, provincial and other material tax returns that are required to be filed and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its property and all other material taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the relevant Group Member); to the best knowledge of Holdings, the Borrower and the Canadian Borrower, no tax Lien has been filed, and, to the best knowledge of Holdings, the Borrower and the Canadian Borrower, no claim is being asserted, with respect to any such tax, fee or other charge.

4.11. *Federal Regulations*. No part of the proceeds of any Loans, and no other extensions of credit hereunder, will be used for any purpose that violates the provisions of the Regulations of the Board. If requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1, as applicable, referred to in Regulation U.

4.12. *Labor Matters*. Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any Group Member pending or, to the knowledge of Holdings, the Borrower or the Canadian Borrower, threatened; (b) to the knowledge of Holdings, the Borrower and the Canadian Borrower, hours worked by and payment made to employees of each Group Member have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters; and (c) all payments due from any Group Member on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant Group Member.

4.13. *ERISA*. Neither a Reportable Event nor an "accumulated funding deficiency" (within the meaning of Section 412 of the Code or Section 302 of ERISA) has occurred during the five-year period prior to the date on which this representation is made or deemed made with respect to any Plan, and each Plan has complied in all material respects with the applicable provisions of ERISA and the Code. No termination of a Single Employer Plan has occurred, and no Lien in favor of the PBGC or a Plan has arisen, during such five-year period. The present value of all accrued benefits under each Single Employer Plan (based on those assumptions used to fund such Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Plan allocable to such accrued benefits by a material amount. Neither the Borrower nor any Commonly Controlled Entity has had a complete or partial withdrawal from any Multiemployer Plan that has resulted or could reasonably be expected to result in a material liability under ERISA, and neither the Borrower nor any Commonly Controlled Entity would become subject

to any material liability under ERISA if the Borrower or any such Commonly Controlled Entity were to withdraw completely from all Multiemployer Plans as of the valuation date most closely preceding the date on which this representation is made or deemed made. No such Multiemployer Plan is in Reorganization or Insolvent.

4.14. *Investment Company Act; Other Regulations*. No Loan Party is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended. No Loan Party is subject to regulation under any Requirement of Law (other than Regulation X of the Board) that limits its ability to incur Indebtedness.

4.15. *Subsidiaries*. Except as disclosed to the Administrative Agent by the Borrower in writing from time to time after the Closing Date, (a) Schedule 4.15 sets forth the name and jurisdiction of incorporation or formation of each Subsidiary, including without limitation the Canadian Borrower, and, as to each such Subsidiary, the percentage of each class of Capital Stock owned by any Loan Party and (b) there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Capital Stock of the Borrower or any Subsidiary, except as created by the Loan Documents or under such Subsidiaries' existing constituent documents.

4.16. *Use of Proceeds*. The proceeds of the Tranche B Term Loans shall be used to finance a portion of the Acquisition and to pay related fees and expenses ("*Acquisition Consideration*"). The proceeds of the Tranche C Term Loans shall be used to pay Acquisition Consideration; *provided*, that to the extent any portion of the Tranche C Terms Loans are not promptly applied for such purpose, such portion of the proceeds thereof shall be placed into escrow on terms and conditions reasonably satisfactory to the Administrative Agent, *provided further*, that, to the extent (and only to the extent) the Borrower shall have previously paid a portion of the Acquisition Consideration through other sources, then the Borrower may use such portion of the proceeds for general corporate purposes. The proceeds of the Revolving Loans, the Canadian Revolving Loans, the Additional Revolving Loans, the Swingline Loans and the Letters of Credit shall be used for general corporate purposes.

4.17. *Environmental Matters*. Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect or as disclosed on Schedule 4.17:

(a) the facilities and properties owned, leased or operated by any Group Member (the "*Properties*") do not contain, and have not previously contained, any Materials of Environmental Concern in amounts or concentrations or under circumstances that constitute or constituted a violation of, or could give rise to liability under, any Environmental Law;

(b) no Group Member has received or is aware of any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Properties or the business operated by any Group Member (the "*Business*"), nor does Holdings, the Borrower or the Canadian Borrower have knowledge or reason to believe that any such notice will be received or is being threatened;

(c) Materials of Environmental Concern have not been transported or disposed of from the Properties in violation of, or in a manner or to a location that could give rise to liability under, any Environmental Law, nor have any Materials of Environmental Concern been generated, treated, stored or disposed of at, on or under any of the Properties in violation of, or in a manner that could give rise to liability under, any applicable Environmental Law;

(d) no judicial proceeding or governmental or administrative action is pending or, to the knowledge of Holdings, the Borrower and the Canadian Borrower, threatened, under any Environmental Law to which any Group Member is or will be named as a party with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders,

administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business;

(e) there has been no release or threat of release of Materials of Environmental Concern at or from the Properties, or arising from or related to the operations of any Group Member in connection with the Properties or otherwise in connection with the Business, in violation of or in amounts or in a manner that could give rise to liability under Environmental Laws;

(f) the Properties and all operations at the Properties are in compliance, and have in the last five years been in compliance, with all applicable Environmental Laws, and there is no contamination at, under or about the Properties or violation of any Environmental Law with respect to the Properties or the Business; and

(g) no Group Member has assumed any liability of any other Person under Environmental Laws.

4.18. *Accuracy of Information, etc.* No statement or information contained in this Agreement, any other Loan Document, the Confidential Information Memorandum or any other document, certificate or statement furnished by or on behalf of any Loan Party to the Administrative Agent or the Lenders, or any of them (as modified or supplemented by other information so furnished), for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the date such statement, information, document or certificate was so furnished (or, in the case of the Confidential Information Memorandum, as of the date of this Agreement), any untrue statement of a material fact or omitted (when taken as a whole) to state a material fact (known to Holdings, the Borrower or the Canadian Borrower, in the case of any document not furnished by any of them) necessary to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. The projections and *pro forma* financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. As of the date hereof, the representations and warranties contained in the Acquisition Documentation are true and correct in all material respects. There is no fact known to any Loan Party (other than matters of a general economic nature) that could reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents, in the Confidential Information Memorandum or in any other documents, certificates and statements furnished to the Administrative Agent and the Lenders for use in connection with the transactions contemplated hereby and by the other Loan Documents.

4.19. *Security Documents*. (a) The Guarantee and Collateral Agreement is effective to create in favor of the Administrative Agent, for the benefit of the Lenders, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. In the case of the Pledged Stock defined in and described in the Guarantee and Collateral Agreement, when stock certificates representing such Pledged Stock are delivered to the Administrative Agent, and in the case of the other Collateral described in the Guarantee and Collateral Agreement, when financing statements and other filings specified on Schedule 4.19(a) in appropriate form are filed in the offices specified on Schedule 4.19(a), the Guarantee and Collateral Agreement shall constitute a fully perfected (with respect to Intellectual Property, to the extent such perfection and priority may be achieved by filings made in the U.S. Patent and Trademark Office and the U.S. Copyright Office) Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof, as security for the Obligations (as defined in the Guarantee and Collateral Agreement), in each case prior and superior in right to any other Person (except, in the case of Collateral other than Pledged Stock, Liens permitted by Section 7.3); *provided*, *however*, that (i) the recordation of any trademark

security agreement in the U.S. Patent and Trademark Office shall occur within three (3) months of the date of the Guarantee and Collateral Agreement; (ii) the recordation of any copyright security agreement shall occur within one (1) month of the date of the Guarantee and Collateral Agreement; (iii) subsequent recordations may be necessary to perfect the security interest in issued registrations and applications for Intellectual Property acquired after the date of the Guarantee and Collateral Agreement; and (iv) certain actions may be required in order to perfect the Lien in Intellectual Property included in the Collateral which is protected under non-U.S. law.

(b) Each of the Mortgages is effective to create in favor of the Administrative Agent, for the benefit of the Lenders, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds thereof, and when the Mortgages are filed in the offices specified on Schedule 4.19(b), each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, as security for the Obligations (as defined in the relevant Mortgage), in each case prior and superior in right to any other Person. Schedule 1.1B lists, as of the Closing Date, each parcel of owned real property and each leasehold interest in real property located in the United States and held by the Borrower or any of its Subsidiaries that has a value, in the reasonable opinion of the Borrower, in excess of $500,000.

4.20. *Solvency*. Each Loan Party is, and after giving effect to the Acquisition and the incurrence of all Indebtedness and obligations being incurred in connection herewith and therewith will be, Solvent.

4.21. *Regulation H.* No Mortgage encumbers improved real property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968.

4.22. *Certain Documents*. The Borrower has delivered to the Administrative Agent a complete and correct copy of the Acquisition Documentation and the Senior Note Indenture, including any amendments, supplements or modifications with respect to any of the foregoing.

4.23. *Franchise Agreements*. The Borrower has delivered to the Administrative Agent true and complete copies of any franchise agreements to which the Borrower or any of its Subsidiaries is a party.

SECTION 5. CONDITIONS PRECEDENT

5.1. *Conditions to Initial Extension of Credit*. The agreement of each Lender to make the initial extension of credit requested to be made by it is subject to the satisfaction, prior to or concurrently with the making of such extension of credit on the Closing Date, of the following conditions precedent:

(a) *Credit Agreement; Guarantee and Collateral Agreement.* The Administrative Agent shall have received (i) this Agreement or, in the case of the Lenders, an Addendum, executed and delivered by the Administrative Agent, Holdings, the Borrower, the Canadian Borrower and each Person listed on Schedules 1.1A and 1.1D, (ii) the Guarantee and Collateral Agreement, executed and delivered by Holdings, the Borrower and each Subsidiary Guarantor and (iii) an Acknowledgement and Consent in the form attached to the Guarantee and Collateral Agreement, executed and delivered by each Issuer (as defined therein), if any, that is not a Loan Party.

(b) *Acquisition, etc.* The following transactions shall have been consummated, in each case on terms and conditions reasonably satisfactory to the Lenders:

(i) Holdings shall have acquired all of the Capital Stock of the Borrower by operation of the Merger on terms substantially in accordance with the Acquisition Agreement and in accordance with applicable law (the "*Acquisition*") (it being understood that no provision of the Acquisition

Documentation shall have been waived, amended, supplemented or otherwise modified in any respect materially adverse to the Borrower or the Lenders);

(ii) Holdings shall have received at least $108,000,000 from the proceeds of equity issued by Holdings to the Sponsor, and such proceeds shall have been contributed to the Borrower;

(iii) the Borrower shall have received at least $175,000,000 in gross cash proceeds from the issuance of the Senior Notes; and

(iv) (i) The Administrative Agent shall have received satisfactory evidence that the Borrower's Second Amended and Restated Revolving Credit and Term Loan Agreement, dated as of November 1, 2004 (the "*Existing Credit Agreement*"), shall have been terminated and all amounts thereunder shall have been paid in full and (ii) satisfactory arrangements shall have been made for the termination of all Liens granted in connection therewith.

(c) *Existing Notes.* The Borrower (i) shall have delivered to the trustee under the Existing Notes a notice of redemption to effect the redemption in full of all outstanding Existing Notes and (ii) shall have deposited into escrow an amount equal to the amount that the holders of the Existing Notes are entitled to receive upon conversion of the Existing Notes, in each case on terms reasonably satisfactory to the Administrative Agent.

(d) *Pro Forma Balance Sheet; Financial Statements.* The Lenders shall have received (i) the Pro Forma Balance Sheet, (ii) audited consolidated financial statements of the Borrower for the 2002, 2003 and 2004 Fiscal Years, (iii) unaudited interim consolidated financial statements of the Borrower for each fiscal quarter ended after the date of the latest applicable financial statements delivered pursuant to clause (ii) of this paragraph and unaudited consolidated financial statements for the same period of the prior Fiscal Year, (iv) monthly financial data generated by the Borrower's internal accounting systems for use by senior management for each monthly accounting period ended after the latest fiscal quarter referred to in clause (iii) above and (v) all other financial statements for completed or pending acquisitions that may be required under Regulation S-X, and such financial statements shall not, in the reasonable judgment of the Lenders, reflect any material adverse change in the consolidated financial condition of the Borrower, as reflected in the financial statements or projections contained in the Confidential Information Memorandum.

(e) *Approvals.* All governmental and third party approvals necessary in connection with the Acquisition, the continuing operations of the Group Members and the transactions contemplated hereby shall have been obtained and be in full force and effect, and there shall not exist any action, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or Governmental Authority that could reasonably be expected to have a material adverse effect on the financing of the Acquisition or any of the other transactions contemplated hereby.

(f) *Lien Searches.* The Administrative Agent shall have received the results of a recent lien search in each of the jurisdictions where assets of the Loan Parties are located, and such search shall reveal no liens on any of the assets of the Loan Parties except for liens permitted by Section 7.3 or discharged on or prior to the Closing Date pursuant to documentation satisfactory to the Administrative Agent.

(g) *Fees.* The Lenders and the Administrative Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the Closing Date. All such amounts will be paid with proceeds of Loans made on the Closing Date and will be reflected in the funding instructions given by the Borrower to the Administrative Agent on or before the Closing Date.

(h) *Closing Certificate; Certified Certificate of Incorporation; Good Standing Certificates*. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Closing Date,

substantially in the form of Exhibit C, with appropriate insertions and attachments, including the certificate of incorporation of each Loan Party that is a corporation certified by the relevant authority of the jurisdiction of organization of such Loan Party, and (ii) a long form good standing certificate for each Loan Party from its jurisdiction of organization (other than, in each case, with respect to Dave & Buster's of Pennsylvania, Inc. and Dave & Buster's of Pittsburgh, Inc., which documentation shall be delivered as soon as possible following the Closing Date).

(i) *Legal Opinions.* The Administrative Agent shall have received the following executed legal opinions:

(i) the legal opinion of Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Borrower, the Canadian Borrower and their Subsidiaries, substantially in the form of Exhibit F; and

(ii) the legal opinion of local counsel in each of New York, Delaware, Missouri, California, Texas, Illinois, Ohio, Florida, and Canada.

Each such legal opinion shall cover such other matters incident to the transactions contemplated by this Agreement as the Administrative Agent may reasonably require.

(j) *Pledged Stock; Stock Powers; Pledged Notes.* The Administrative Agent shall have received (i) the certificates representing the shares of Capital Stock pledged pursuant to the Guarantee and Collateral Agreement, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof and (ii) each promissory note (if any) pledged to the Administrative Agent pursuant to the Guarantee and Collateral Agreement endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(k) *Filings, Registrations and Recordings.* The Administrative Agent shall have received each document (including any Uniform Commercial Code financing statement) required by the Security Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of the Lenders, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 7.3), and each document shall be in proper form for filing, registration or recordation.

(l) *Mortgages, etc.* (i) The Administrative Agent shall have received a Mortgage with respect to each Mortgaged Property, executed and delivered by a duly authorized officer of each party thereto.

(ii) If requested by the Administrative Agent, the Administrative Agent shall have received, and the title insurance company issuing the policy referred to in clause (iii) below (the "*Title Insurance Company*") shall have received, maps or plats of an as-built survey of the sites of the Mortgaged Properties certified to the Administrative Agent and the Title Insurance Company in a manner satisfactory to them, dated a date satisfactory to the Administrative Agent and the Title Insurance Company by an independent professional licensed land surveyor satisfactory to the Administrative Agent and the Title Insurance Company (the "*Surveys*"); *provided*, *however*, that the obligation to deliver the Surveys shall not be a condition to the initial extension of credit on the Closing Date, so long as the Borrower delivers the Surveys within 75 days after the Closing Date (or such later date as the Administrative Agent may agree).

(iii) The Administrative Agent shall have received in respect of each Mortgaged Property a mortgagee's title insurance policy (or policies) or marked up unconditional binder for such insurance, in each case in form and substance satisfactory to the Administrative Agent. The Administrative Agent shall have received evidence satisfactory to it that all premiums in respect of each such policy, all charges for mortgage recording tax, and all related expenses, if any, have been paid.

(iv) If requested by the Administrative Agent, the Administrative Agent shall have received (A) a policy of flood insurance that (1) covers any parcel of improved real property that is encumbered by any Mortgage (2) is written in an amount not less than the outstanding principal amount of the indebtedness secured by such Mortgage that is reasonably allocable to such real property or the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less, and (3) has a term ending not later than the maturity of the Indebtedness secured by such Mortgage and (B) confirmation that the Borrower has received the notice required pursuant to Section 208(e)(3) of Regulation H of the Board.

(v) The Administrative Agent shall have received a copy of all recorded documents referred to, or listed as exceptions to title in, the title policy or policies referred to in clause (iii) above and a copy of all other material documents affecting the Mortgaged Properties.

(m) *Solvency Certificate*. The Administrative Agent shall have received a solvency certificate from the chief financial officer of the Borrower.

(n) *Insurance*. The Administrative Agent shall have received insurance certificates satisfying the requirements of Section 5.2(b) of the Guarantee and Collateral Agreement.

(o) *Pro Forma Leverage Ratio*. The Pro Forma Leverage Ratio shall not exceed 5.70 to 1.0, and the Borrower shall have provided reasonably satisfactory support for such calculation, *provided* that the Sponsors shall have the ability to cure any shortfall with equity contributions in the same manner as provided for in Section 8.2 with respect to the Financial Condition Covenants.

(p) *Ratings.* The Facilities shall have received a rating from both Moody's and S&P.

5.2. *Conditions to Each Extension of Credit.* The agreement of each Lender to make any extension of credit requested to be made by it on any date (including its initial extension of credit) is subject to the satisfaction of the following conditions precedent:

(a) *Representations and Warranties.* Each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents shall be true and correct in all material respects on and as of such date as if made on and as of such date (it being understood that, notwithstanding the foregoing, only the making of the representations and warranties contained in Sections 4.1, 4.4, 4.11, 4.14 and 4.18 will be a condition on the Closing Date).

(b) *No Default.* No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the extensions of credit requested to be made on such date.

Each borrowing by and issuance of a Letter of Credit on behalf of the Borrower hereunder shall constitute a representation and warranty by the Borrower as of the date of such extension of credit that the conditions contained in this Section 5.2 have been satisfied.

SECTION 6. AFFIRMATIVE COVENANTS

Holdings, the Borrower and the Canadian Borrower hereby jointly and severally agree that, so long as the Commitments remain in effect, any Letter of Credit remains outstanding or any Loan or other amount is owing to any Lender or the Administrative Agent hereunder, each of Holdings, the Borrower and the Canadian Borrower shall and shall cause each of its Subsidiaries to:

6.1. *Financial Statements*. Furnish to the Administrative Agent and each Lender:

(a) as soon as available, but in any event within 90 days after the end of each Fiscal Year of the Borrower, a copy of the audited consolidated balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such year and the related audited consolidated statements of income and of cash flows for such year, setting forth in each case in comparative form the figures for the previous

year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, by Ernst & Young LLP or other independent certified public accountants of nationally recognized standing;

(b) as soon as available, but in any event not later than 45 days after the end of each of the first three quarterly periods of each Fiscal Year of the Borrower, the unaudited consolidated balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such quarter and the related unaudited consolidated statements of income and of cash flows for such quarter and the portion of the Fiscal Year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer as fairly presenting, in all material respects, the consolidated financial condition and results of operations of the Borrower and its Subsidiaries as at the dates indicated (subject to normal year-end audit adjustments and the absence of footnotes); and

(c) as soon as available, but in any event not later than 30 days after the end of each monthly fiscal accounting period occurring during each Fiscal Year of the Borrower (other than the third, sixth, ninth and twelfth such monthly fiscal accounting period), financial statements of the Borrower and its Subsidiaries in a form reasonably acceptable to the Administrative Agent, prepared in accordance with GAAP, certified by a Responsible Officer as fairly presenting, in all material respects, the consolidated financial condition and results of operations of the Borrower and its Subsidiaries as at the dates indicated (subject to normal year-end audit adjustments and the absence of footnotes).

All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied (except as approved by such accountants or officer, as the case may be, and disclosed in reasonable detail therein) consistently throughout the periods reflected therein and with prior periods.

6.2. *Certificates; Other Information.* Furnish to the Administrative Agent and each Lender (or, in the case of clause (g), to the relevant Lender):

(a) concurrently with the delivery of the financial statements referred to in Section 6.1(a), a certificate of the independent certified public accountants reporting on such financial statements stating that in making the examination necessary therefor no knowledge was obtained of any Default or Event of Default, except as specified in such certificate;

(b) concurrently with the delivery of any financial statements pursuant to Section 6.1(a) or (b), (i) a certificate of a Responsible Officer stating that, to the best of each such Responsible Officer's knowledge, such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate and (ii) (x) a Compliance Certificate containing all information and calculations necessary for determining compliance by each Group Member with the provisions of this Agreement referred to therein as of the last day of the fiscal quarter or Fiscal Year of the Borrower, as the case may be, and (y) to the extent not previously disclosed to the Administrative Agent, a description of any change in the jurisdiction of organization of any Loan Party and a list of any Intellectual Property acquired by any Loan Party since the date of the most recent report delivered pursuant to this clause (y) (or, in the case of the first such report so delivered, since the Closing Date);

(c) as soon as available, and in any event no later than 45 days after the end of each Fiscal Year of the Borrower, a detailed consolidated budget for the following Fiscal Year (including a projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the following Fiscal Year, the related consolidated statements of projected cash flow, projected changes in financial position and projected income and a description of the underlying assumptions applicable thereto), and, as soon as available, significant revisions, if any, of such budget and projections with respect to such Fiscal Year (collectively, the "*Projections*"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections are based on reasonable estimates, information and

assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect;

(d) within 45 days after the end of each fiscal quarter of the Borrower, a narrative discussion and analysis of the financial condition and results of operations of the Borrower and its Subsidiaries for such fiscal quarter and for the period from the beginning of the then current Fiscal Year to the end of such fiscal quarter, as compared to the portion of the Projections covering such periods and to the comparable periods of the previous year;

(e) no later than 10 Business Days prior to the effectiveness thereof, copies of substantially final drafts of any proposed amendment, supplement, waiver or other modification with respect to the Senior Note Indenture or the Acquisition Documentation;

(f) within five days after the same are sent, copies of all financial statements and reports that Holdings or the Borrower sends to the holders of any class of its debt securities or public equity securities and, within five days after the same are filed, copies of all financial statements and reports that Holdings or the Borrower may make to, or file with, the SEC; and

(g) promptly, such additional financial and other information as any Lender through the Administrative Agent may from time to time reasonably request.

6.3. *Payment of Obligations.* Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except (i) where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the relevant Group Member or (ii) where the amount thereof, the failure of which to make such payment, would not cause an Event of Default under Section 8.1(e).

6.4. *Maintenance of Existence; Compliance.* (a)(i) Preserve, renew and keep in full force and effect its organizational existence and (ii) take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business, except, in each case, as otherwise permitted by Section 7.4 and except, in the case of clause (ii) above, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (b) comply with all Contractual Obligations and Requirements of Law except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.5. *Maintenance of Property; Insurance.* (a) Keep all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted and (b) maintain with financially sound and reputable insurance companies insurance on all its property in at least such amounts and against at least such risks (but including in any event public liability, product liability and business interruption) as are usually insured against in the same general area by companies engaged in the same or a similar business.

6.6. *Inspection of Property; Books and Records; Discussions.* (a) Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and (b) permit representatives of any Lender upon reasonable advance notice and during normal business hours to visit and inspect any of its properties and examine and make abstracts from any of its books and records at any reasonable time and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of the Group Members with officers and employees of the Group Members and with their independent certified public accountants; *provided* that in the case of any discussion or meeting with the independent public accountants, only if the Borrower has been given the opportunity to participate in such discussion or meeting.

6.7. *Notices.* Promptly give notice to the Administrative Agent and each Lender of:

(a) the occurrence of any Default or Event of Default;

(b) any (i) default or event of default under any Contractual Obligation of any Group Member or (ii) litigation, investigation or proceeding that may exist at any time between any Group Member and any Governmental Authority, that in either case, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect;

(c) any litigation or proceeding affecting any Group Member (i) in which the amount involved is $2,500,000 or more and not covered by insurance, (ii) in which injunctive or similar relief is sought or (iii) which relates to any Loan Document;

(d) the following events, as soon as possible and in any event within 30 days after the Borrower knows or has reason to know thereof: (i) the occurrence of any Reportable Event with respect to any Plan, a failure to make any required contribution to a Plan, the creation of any Lien in favor of the PBGC or a Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC or the Borrower or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the termination, Reorganization or Insolvency of, any Plan;

(e) any development or event that has had or could reasonably be expected to have a Material Adverse Effect; and

(f) any amendment or modification of any material provision relating to compensation, term or advertising requirements under any franchise agreement.

Each notice pursuant to this Section 6.7 shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the relevant Group Member proposes to take with respect thereto.

6.8. *Environmental Laws.* (a) Comply with, and use commercially reasonable efforts to ensure compliance by all tenants and subtenants, if any, with, all applicable Environmental Laws, and obtain and comply with and maintain, and use commercially reasonable efforts to ensure that all tenants and subtenants obtain and comply with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws, except to the extent that the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws, except to the extent that the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.9. *Additional Collateral, etc.* (a) With respect to any property acquired after the Closing Date by any Group Member (other than (w) any property described in paragraph (b), (c), (d) or (e) below, (x) any property subject to a Lien expressly permitted by Section 7.3(g), (y) property acquired by any Excluded Foreign Subsidiary and (z) any property not meeting the minimum thresholds set forth in the Guarantee and Collateral Agreement) as to which the Administrative Agent, for the benefit of the Lenders, does not have a perfected Lien, promptly (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Lenders, a security interest in such property and (ii) take all actions necessary or advisable to grant to the Administrative Agent, for the benefit of the Lenders, a perfected first priority security interest in such property, including the filing of Uniform Commercial Code financing

statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent.

(b) With respect to any fee interest in any real property having a value (together with improvements thereof) of at least $1,000,000 acquired after the Closing Date by any Group Member (other than (x) any such real property subject to a Lien expressly permitted by Section 7.3(g) and (y) real property acquired by any Excluded Foreign Subsidiary), promptly (i) execute and deliver a first priority Mortgage, in favor of the Administrative Agent, for the benefit of the Lenders, covering such real property, (ii) if requested by the Administrative Agent, provide the Lenders with (x) title and extended coverage insurance covering such real property in an amount at least equal to the purchase price of such real property (or such other amount as shall be reasonably specified by the Administrative Agent) as well as a current ALTA survey thereof, together with a surveyor's certificate and (y) any consents or estoppels reasonably deemed necessary or advisable by the Administrative Agent in connection with such Mortgage, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(c) With respect to any leasehold property acquired after the Closing Date (other than any leasehold property acquired by any Excluded Foreign Subsidiary), promptly execute and deliver (or, to the extent landlord consent to such Leasehold Mortgage is required, use its commercially reasonable best efforts to execute and deliver) a first priority Leasehold Mortgage, in favor of the Administrative Agent, for the benefit of the Lenders, covering such leasehold property, together with such documents and, to the extent consistent with the Existing Credit Agreement, title insurance policies and legal opinions as the Administrative Agent shall reasonably request.

(d) With respect to any new Subsidiary (other than an Excluded Foreign Subsidiary) created or acquired after the Closing Date by any Group Member (which, for the purposes of this paragraph (c), shall include any existing Subsidiary that ceases to be an Excluded Foreign Subsidiary), promptly (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Lenders, a perfected first priority security interest in the Capital Stock of such new Subsidiary that is owned by any Group Member, (ii) deliver to the Administrative Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Group Member, (iii) cause such new Subsidiary (A) to become a party to the Guarantee and Collateral Agreement, (B) to take such actions necessary or advisable to grant to the Administrative Agent for the benefit of the Lenders a perfected first priority security interest in the Collateral described in the Guarantee and Collateral Agreement with respect to such new Subsidiary, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent and (C) to deliver to the Administrative Agent a certificate of such Subsidiary, substantially in the form of Exhibit C, with appropriate insertions and attachments, and (iv) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(e) With respect to any new Excluded Foreign Subsidiary created or acquired after the Closing Date by any Group Member (other than by any Group Member that is an Excluded Foreign Subsidiary), promptly (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Lenders, a perfected first priority security interest in the Capital Stock of such new Subsidiary that is owned by any such Group Member (provided that in no event shall more than 66% of the total outstanding voting Capital Stock of any

such new Subsidiary be required to be so pledged), (ii) deliver to the Administrative Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Group Member, and take such other action as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Administrative Agent's security interest therein, and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

6.10. *Landlord Consents.* Use its commercially reasonable best efforts to obtain landlord consents with respect to each leasehold property in form and substance reasonably satisfactory to the Administrative Agent.

6.11. *Leasehold Mortgages.* (a) Within 75 days after the Closing Date (or such later date as the Administrative Agent may agree) deliver to the Administrative Agent a leasehold mortgage, in form and substance reasonably satisfactory to it (a "*Leasehold Mortgage*"), with respect to each existing leasehold property (other than any leasehold property owned by any Excluded Foreign Subsidiary) for which landlord consent is not required (which leasehold properties are set forth on Schedule 6.11) and (b) use its commercially reasonable best efforts to deliver Leasehold Mortgages with respect to each other existing leasehold property (other than any leasehold property owned by any Excluded Foreign Subsidiary) (it being understood that to the extent the Borrower has previously requested landlord consent to such Leasehold Mortgage and such consent was denied, the Borrower shall not be required to seek such consent again), in each case together with such documents, and, to the extent consistent with the Existing Credit Agreement, title insurance policies and legal opinions as the Administrative Agent shall reasonably request.

SECTION 7. NEGATIVE COVENANTS

Holdings, the Borrower and the Canadian Borrower hereby jointly and severally agree that, so long as the Commitments remain in effect, any Letter of Credit remains outstanding or any Loan or other amount is owing to any Lender or the Administrative Agent hereunder, each of Holdings, the Borrower and the Canadian Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly:

7.1. *Financial Condition Covenants.*

(a) *Consolidated Leverage Ratio.* Permit the Consolidated Leverage Ratio as at the last day of any period of four consecutive fiscal quarters of the Borrower (or, if less, the number of full fiscal quarters subsequent to the Closing Date) ending with any fiscal quarter set forth below to exceed the ratio set forth below opposite such fiscal quarter:

Fiscal Quarter	Consolidated Leverage Ratio
Second Quarter of Fiscal Year 2006 through Third Quarter of Fiscal Year 2007	4.75:1.00
Fourth Quarter of Fiscal Year 2007 through Third Quarter of Fiscal Year 2008	4.50:1.00
Fourth Quarter of Fiscal Year 2008 through Third Quarter of Fiscal Year 2009	4.25:1.00
Fourth Quarter of Fiscal Year 2009 through Third Quarter of Fiscal Year 2010	3.75:1.00
Fourth Quarter of Fiscal Year 2010 and thereafter	3.50:1.00

(b) *Consolidated Fixed Charge Coverage Ratio.* Permit the Consolidated Fixed Charge Coverage Ratio for any period of four consecutive fiscal quarters of the Borrower (or, if less, the number of full fiscal quarters subsequent to the Closing Date) ending with any fiscal quarter set forth below to be less than the ratio set forth below opposite such fiscal quarter:

Fiscal Quarter	Consolidated Fixed Charge Coverage Ratio
Second Quarter of Fiscal Year 2006 through Third Quarter of Fiscal Year 2007	1.00:1.00
Fourth Quarter of Fiscal Year 2007 through Third Quarter of Fiscal Year 2008	1.10:1.00
Fourth Quarter of Fiscal Year 2008 through Third Quarter of Fiscal Year 2009	1.15:1.00
Fourth Quarter of Fiscal Year 2009 and thereafter	1.20:1.00

7.2. *Indebtedness.* Create, issue, incur, assume, become liable in respect of or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party pursuant to any Loan Document;

(b) Indebtedness of the Borrower to any Subsidiary and of any Wholly Owned Subsidiary Guarantor to the Borrower or any other Subsidiary;

(c) Guarantee Obligations incurred in the ordinary course of business by the Borrower or any of its Subsidiaries of obligations of any Wholly Owned Subsidiary Guarantor;

(d) Indebtedness outstanding on the date hereof and listed on Schedule 7.2(d) and any refinancings, refundings, replacements, renewals or extensions thereof (without increasing the principal amount thereof or shortening the maturity thereof);

(e) Indebtedness (including, without limitation, Capital Lease Obligations) secured by Liens permitted by Section 7.3(g) in an aggregate principal amount not to exceed $15,000,000 at any one time outstanding and any refinancings, refundings, replacements, renewals or extensions thereof (without increasing the principal amount thereof or shortening the maturity thereof);

(f) (i) Indebtedness of the Borrower in respect of the Senior Notes in an aggregate principal amount not to exceed $175,000,000 and (ii) Guarantee Obligations of Holdings and any Subsidiary Guarantor in respect of such Indebtedness and any refinancings, refundings, replacements, renewals or extensions thereof permitted under the Senior Notes Indenture (without increasing the principal amount thereof or shortening the maturity thereof);

(g) Permitted Senior Indebtedness and any refinancings, refundings, replacements, renewals or extensions thereof (without increasing the principal amount thereof or shortening the maturity thereof) to the extent the Net Cash Proceeds in respect thereof are used to prepay Term Loans pursuant to Section 2.11(a);

(h) endorsements of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business;

(i) Indebtedness in respect of Swap Agreements permitted under Section 7.12;

(j) Indebtedness of any Excluded Foreign Subsidiary to the Borrower or any Subsidiary of the Borrower, provided that all such intercompany Indebtedness shall be subordinated to the Obligations on terms satisfactory to the Administrative Agent and shall be in an aggregate principal amount not to exceed $1,000,000;

(k) Indebtedness consisting of Guaranteed Obligations of any Indebtedness of the Borrower or any of its Subsidiaries otherwise permitted to be incurred pursuant to this Section 7.2;

(l) Indebtedness of a Person existing at the time such Person becomes a Subsidiary of the Borrower following the Closing Date, which Indebtedness is in existence at the time such Person becomes a Subsidiary and is not created in connection with or in contemplation of such Person becoming a Subsidiary; *provided* that the aggregate principal amount of all such Indebtedness in the aggregate shall not exceed $5,000,000 at any time outstanding (and any refinancings, refundings, replacements, renewals or extensions thereof (without increasing the principal amount thereof or shortening the maturity thereof));

(m) Indebtedness consisting of obligations to employees of the Borrower or its Subsidiaries in respect of employee stock ownership or employee stock option plans to the extent that such obligations are permitted under Section 7.6;

(n) Indebtedness incurred in respect of workers' compensation claims, self-insurance obligations, performance, surety and similar bonds and completion guarantees provided by the Borrower or any Subsidiary of the Borrower in the ordinary course of business, *provided* such Indebtedness is not overdue;

(o) Indebtedness arising from agreements of the Borrower or any Subsidiary of the Borrower providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with the disposition of any business, assets or Capital Stock;

(p) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business, *provided*, *however*, that such Indebtedness is extinguished within five Business Days of incurrence; and

(q) additional Indebtedness of the Borrower or any of its Subsidiaries in an aggregate principal amount (for the Borrower and all Subsidiaries) not to exceed $20,000,000 at any one time outstanding.

7.3. *Liens.* Create, incur, assume or suffer to exist any Lien upon any of its property, whether now owned or hereafter acquired, except:

(a) Liens for taxes not yet due and payable or that are being contested in good faith by appropriate proceedings, *provided* that adequate reserves with respect thereto are maintained on the books of the Borrower or its Subsidiaries, as the case may be, in conformity with GAAP;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business that are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceedings;

(c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;

(d) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(e) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and that do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries and other encumbrances on each Mortgaged Property as and to the extent permitted by the Mortgage applicable thereto;

(f) Liens in existence on the date hereof listed on Schedule 7.3(f), securing Indebtedness permitted by Section 7.2(d), *provided* that no such Lien is spread to cover any additional property after the Closing Date and that the amount of Indebtedness secured thereby is not increased;

(g) Liens securing Indebtedness of the Borrower or any other Subsidiary incurred pursuant to Section 7.2(e) to finance the acquisition of fixed or capital assets, *provided* that (i) such Liens shall be created substantially simultaneously with the acquisition of such fixed or capital assets, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, (iii) the Indebtedness secured thereby does not exceed 100% of the cost of such assets at the time of such acquisition, including transaction costs incurred in connection with such acquisition and (iv) the amount of Indebtedness secured thereby is not increased;

(h) Liens created pursuant to the Security Documents;

(i) any interest or title of a lessor under any lease entered into by the Borrower or any other Subsidiary in the ordinary course of its business and covering only the assets so leased;

(j) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(k) any attachment or judgment Lien not constituting an Event of Default under Section 8.1(h);

(l) non-exclusive licenses of Intellectual Property granted by the Borrower or any of its Subsidiaries in the ordinary course of business consistent with past practice and not interfering in any respect with the ordinary conduct of the business of the Borrower or such Subsidiary;

(m) bankers liens and rights of set-off with respect to customary depositary arrangements entered into in the ordinary course of business of the Borrower and its Subsidiaries;

(n) Liens securing Indebtedness permitted under Section 7.2(l); *provided* that (i) such Liens are not created in contemplation of or in connection with such Person becoming a Subsidiary, (ii) such Liens do not apply to any other property of the Borrower or any of its Subsidiaries, and (iii) such Liens secure only those obligations secured by such Liens on the date such Person becomes a Subsidiary;

(o) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(p) Liens in favor of issuers of surety or performance bonds or letters of credit or bankers' acceptances issued pursuant to the request of and for the account of such Person in the ordinary course of its business so long as neither (i) the aggregate outstanding principal amount of the obligations secured thereby nor (ii) the aggregate fair market value (determined as of the date such Lien is incurred) of the assets subject thereto exceeds (as to the Borrower and all Subsidiaries) $2,000,000 at any one time;

(q) Liens securing Swap Agreements permitted under Section 7.12 so long as neither (i) the aggregate outstanding principal amount of the obligations secured thereby nor (ii) the aggregate fair market value (determined as of the date such Lien is incurred) of the assets subject thereto exceeds (as to the Borrower and all Subsidiaries) $5,000,000 at any one time; and

(r) Liens not otherwise permitted by this Section so long as neither (i) the aggregate outstanding principal amount of the obligations secured thereby nor (ii) the aggregate fair market value (determined as of the date such Lien is incurred) of the assets subject thereto exceeds (as to the Borrower and all Subsidiaries) $5,000,000 at any one time.

7.4. *Fundamental Changes.* Enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its property or business, except that:

(a) (i) any Subsidiary of the Borrower (other than the Canadian Borrower) may be merged or consolidated with or into the Borrower (*provided* that the Borrower shall be the continuing or surviving corporation) or with or into any Wholly Owned Subsidiary Guarantor (*provided* that the Wholly Owned

Subsidiary Guarantor shall be the continuing or surviving corporation) and (ii) any Excluded Foreign Subsidiary (other than the Canadian Borrower) may be merged or consolidated with or into any other Excluded Foreign Subsidiary;

(b) (i) any Subsidiary of the Borrower (other than the Canadian Borrower) may Dispose of any or all of its assets (x) to the Borrower or any Wholly Owned Subsidiary Guarantor (upon voluntary liquidation or otherwise) or (y) pursuant to a Disposition permitted by Section 7.5 and (ii) any Excluded Foreign Subsidiary (other than the Canadian Borrower) may Dispose of any or all of its assets to any other Excluded Foreign Subsidiary;

(c) any Investment expressly permitted by Section 7.8 may be structured as a merger, consolidation or amalgamation; and

(d) the Acquisition may be consummated.

7.5. *Disposition of Property.* Dispose of any of its property, whether now owned or hereafter acquired, or, in the case of any Subsidiary, issue or sell any shares of such Subsidiary's Capital Stock to any Person, except:

(a) the Disposition of damaged, obsolete, surplus or worn out property in the ordinary course of business;

(b) the sale of inventory or the licensing of Intellectual Property or other general intangibles in connection with franchise agreements in the ordinary course of business;

(c) Dispositions permitted by clause (i)(x) or clause (ii) of Section 7.4(b);

(d) the sale or issuance of the Borrower's or any Subsidiary's Capital Stock to Holdings, the Borrower or any Wholly Owned Subsidiary Guarantor;

(e) cash and Cash Equivalents;

(f) Permitted Sale-Leasebacks to the extent the Net Cash Proceeds in respect thereof are used to prepay Term Loans pursuant to Section 2.11(b);

(g) Dispositions to the Borrower or any of its Subsidiaries; *provided* that any such Dispositions involving a Subsidiary that is not a Loan Party shall be made in compliance with Section 7.10;

(h) Dispositions constituting Investments permitted under Section 7.8;

(i) Dispositions of assets in a single or series of related transaction not constituting an Asset Sale; and

(j) the Disposition of other property or a series of related Dispositions of property having a book value not to exceed $10,000,000 in the aggregate for any Fiscal Year of the Borrower.

7.6. *Restricted Payments.* Declare or pay any dividend (other than dividends payable solely in Capital Stock of the Person making such dividend) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of any Group Member, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any Group Member (collectively, "*Restricted Payments*"), except that:

(a) any Subsidiary may make Restricted Payments to the Borrower or any Wholly Owned Subsidiary Guarantor and, on a pro rata basis, to its equity holders (with respect to any non-Wholly Owned Subsidiary);

(b) so long as no Default or Event of Default shall have occurred and be continuing, the Borrower may pay dividends to Holdings to permit Holdings to (i) purchase Holdings' common stock or common stock options from present or former officers or employees of any Group Member upon the death, disability or termination of employment of such officer or employee, *provided*, that the aggregate amount of payments under this clause (i) after the date hereof (net of any proceeds received by Holdings and contributed to the Borrower after the date hereof in connection with resales of any common stock or common stock options so purchased) shall not exceed $2,500,000 in the aggregate for any Fiscal Year of the Borrower and (ii) pay management fees expressly permitted by the last sentence of Section 7.10; and

(c) the Borrower may pay dividends to Holdings to permit Holdings to (i) pay corporate overhead expenses incurred in the ordinary course of business not to exceed $1,000,000 in any Fiscal Year and (ii) pay any taxes that are due and payable by Holdings and the Borrower as part of a consolidated group.

7.7. *Capital Expenditures.* Make or commit to make any New Unit Capital Expenditure with respect to any Unit which commences operation after the Closing Date (regardless of when the Real Estate on which such Unit is located was acquired) at any time that either (a) the aggregate Available Revolving Commitments is less than $15,000,000 or (b) the Consolidated Leverage Ratio as at the last day of the period of four consecutive fiscal quarters most recently ended for which the Borrower has delivered a Compliance Certificate is greater than the Incurrence Ratio.

7.8. *Investments.* Make any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting a business unit of, or make any other investment in, any Person (all of the foregoing, "*Investments*"), except:

(a) extensions of trade credit in the ordinary course of business;

(b) investments in cash and Cash Equivalents;

(c) Guarantee Obligations permitted by Section 7.2;

(d) loans and advances to employees of any Group Member in the ordinary course of business (including for travel, entertainment and relocation expenses) in an aggregate amount for all Group Members not to exceed $1,000,000 at any one time outstanding;

(e) the Acquisition;

(f) Investments in assets useful in the business of the Borrower and its Subsidiaries made by the Borrower or any of its Subsidiaries with the proceeds of any Reinvestment Deferred Amount;

(g) intercompany Investments by any Group Member in the Borrower or any Person that, prior to such Investment, is a Wholly Owned Subsidiary Guarantor, or upon the making of such Investment or if as a result of such Investment, such Person becomes a Wholly Owned Subsidiary Guarantor, or such Person is merged into or consolidated with or transfers all or substantially all of its assets to the Borrower or any Wholly Owned Subsidiary Guarantor;

(h) intercompany loans to any Excluded Foreign Subsidiary to the extent permitted under Section 7.2(j);

(i) Capital Expenditures permitted by Section 7.7;

(j) Investments existing as of the Closing Date and listed on Schedule 7.8(j);

(k) Investments in Swap Agreements permitted under Section 7.12;

(l) Permitted Acquisitions;

(m) Investments in Sugarloaf to the extent required in the management agreement or limited partnership agreement of Sugarloaf;

(n) Capital Stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Borrower or any Subsidiary of the Borrower or in satisfaction of judgments or pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of a debtor;

(o) Investments made as a result of the receipt of non-cash consideration from a Disposition of property that was made pursuant to and in compliance with Section 7.5; and

(p) in addition to Investments otherwise expressly permitted by this Section, Investments by the Borrower or any of its Subsidiaries in an aggregate amount (valued at cost) not to exceed $10,000,000 during the term of this Agreement.

7.9. *Optional Payments and Modifications of Certain Debt Instruments.* (a) Make or offer to make any optional or voluntary payment, prepayment, repurchase or redemption of or otherwise optionally or voluntarily defease or segregate funds with respect to the Senior Notes or any Permitted Senior Indebtedness; *provided* that the Borrower may (i) make prepayments in connection with any refinancing, refunding, replacement, renewal or extension of the Senior Notes or any Permitted Senior Indebtedness permitted under Section 7.2 (in each case, without increasing the principal amount thereof or shortening the maturity thereof) and (ii) repurchase or redeem Senior Notes and Permitted Senior Indebtedness in an aggregate amount not to exceed $15,000,000 so long as (i) no such repurchase or redemption is made with the proceeds of Revolving Loans, Canadian Revolving Loans or Additional Revolving Loans and (ii) after giving pro forma effect to such repurchase or redemption, the Borrower is in compliance with both covenants set forth in Section 7.1, such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.1, or (b) amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of the Senior Notes or any Permitted Senior Indebtedness (other than any such amendment, modification, waiver or other change that (i) would extend the maturity or reduce the amount of any payment of principal thereof or reduce the rate or extend any date for payment of interest thereon and (ii) does not involve the payment of a consent fee).

7.10. *Transactions with Affiliates.* Enter into any transaction, including any purchase, sale, lease or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than Holdings, the Borrower or any Wholly Owned Subsidiary Guarantor) unless such transaction is (a) otherwise permitted under this Agreement, (b) in the ordinary course of business of the relevant Group Member, and (c) upon fair and reasonable terms no less favorable to the relevant Group Member than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate. Notwithstanding the foregoing, the Borrower and its Subsidiaries may (i) pay to Wellspring and their Control Investment Affiliates fees and expenses pursuant to an expense reimbursement agreement approved by the board of directors of the Borrower in an aggregate amount not to exceed in any Fiscal Year of the Borrower $750,000 *plus* other expenses incurred by Wellspring or its Affiliates in connection with the procurement of insurance and/or goods and services by such Person on behalf of the Borrower or its Subsidiaries as permitted by such expense reimbursement agreement, (ii) pay reasonable and customary fees to members of the Board of Directors of Holdings, the Borrower and its Subsidiaries, (iii) make loans and advances to non-executive employees in the ordinary course of business to the extent permitted as a permitted Investment under Section 7.8(d), and (iv) consummate the transactions set forth on Schedule 7.10.

7.11. *Sales and Leasebacks.* Enter into any arrangement with any Person providing for the leasing by any Group Member of real or personal property that has been or is to be sold or transferred by such Group Member to such Person or to any other Person to whom funds have been or are to be

advanced by such Person on the security of such property or rental obligations of such Group Member (a "*Sale-Leaseback*"); *provided* that, so long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower or any Subsidiary of the Borrower may enter into a Sale-Leaseback with respect to any Unit which commences operations after the Closing Date (regardless of when the Real Estate on which such Unit is located was acquired) or any fee or leasehold interest in Real Estate acquired after the Closing Date if (a) the terms of the sale as such are comparable to terms which could be obtained in an arm's-length sale among unaffiliated parties not involving a Sale-Leaseback transaction, (b) the terms of the lease as such are comparable to terms which could be obtained in an arm's-length commercial operating lease among unaffiliated parties and (c) the Net Cash Proceeds in respect thereof are used to prepay Term Loans pursuant to Section 2.11(b) and, *provided further* that, assuming that such Sale-Leaseback (and any repayment of Indebtedness in conjunction therewith) had occurred immediately prior to the period of four consecutive fiscal quarters most recently ended, no Default or Event of Default would have occurred under Section 7.1 after giving effect to such Sale-Leaseback (any such Sale-Leaseback referred to herein, a "*Permitted Sale-Leaseback*").

7.12. *Swap Agreements.* Enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which the Borrower or any Subsidiary has actual exposure (other than those in respect of Capital Stock or the Senior Notes) and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Subsidiary.

7.13. *Changes in Fiscal Periods.* Permit the Fiscal Year of the Borrower to end on a day other than the Sunday after the Saturday closest to January 31 of each calendar year or change the Borrower's method of determining fiscal quarters. The term "Fiscal Year XXXX", where "XXXX" is a calendar year, shall refer to the Fiscal Year of the Borrower beginning during such calendar year.

7.14. *Negative Pledge Clauses.* Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any Group Member to create, incur, assume or suffer to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, other than (a) this Agreement and the other Loan Documents, (b) the Senior Notes Indenture, (c) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby), (d) customary provisions contained in any agreement that has been entered into in connection with a Disposition of assets permitted under Section 7.5 and (e) customary anti-assignment provisions contained in leases and licensing agreements entered into in the ordinary course of business, if required by such lessor or licensor.

7.15. *Clauses Restricting Subsidiary Distributions.* Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Subsidiary of the Borrower to (a) make Restricted Payments in respect of any Capital Stock of such Subsidiary held by, or pay any Indebtedness owed to, the Borrower or any other Subsidiary of the Borrower, (b) make loans or advances to, or other Investments in, the Borrower or any other Subsidiary of the Borrower or (c) transfer any of its assets to the Borrower or any other Subsidiary of the Borrower, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents or the Senior Notes Indenture and (ii) any restrictions with respect to a Subsidiary imposed pursuant to an agreement that has been entered into in connection with the Disposition of all or substantially all of the Capital Stock or assets of such Subsidiary.

7.16. *Lines of Business.* Enter into any business, either directly or through any Subsidiary, except for those businesses in which the Borrower and its Subsidiaries are engaged on the date of this Agreement (after giving effect to the Acquisition) or that are reasonably related thereto.

7.17. *Amendments to Acquisition Documents.* (a) Amend, supplement or otherwise modify (pursuant to a waiver or otherwise) the terms and conditions of the indemnities and licenses furnished to the Borrower or any of its Subsidiaries pursuant to the Acquisition Documentation such that after giving effect thereto such indemnities or licenses shall be materially less favorable to the interests of the Loan Parties or the Lenders with respect thereto or (b) otherwise amend, supplement or otherwise modify the terms and conditions of the Acquisition Documentation or any such other documents except for any such amendment, supplement or modification that (i) becomes effective after the Closing Date and (ii) could not reasonably be expected to have a Material Adverse Effect.

7.18. *Franchises.* Enter into any franchise agreement pursuant to which the Borrower or any of its Subsidiaries is prohibited from pledging or otherwise assigning its rights under such franchise agreement, including its right to receive any franchise fees or other fees or amounts paid to the Borrower or such Subsidiary thereunder.

SECTION 8. EVENTS OF DEFAULT

8.1. *Events of Default.* If any of the following events shall occur and be continuing:

(a) the Borrower or the Canadian Borrower shall fail to pay any principal of any Loan or Reimbursement Obligation when due in accordance with the terms hereof; or the Borrower or the Canadian Borrower shall fail to pay any interest on any Loan or Reimbursement Obligation, or any other amount payable hereunder or under any other Loan Document, within five days after any such interest or other amount becomes due in accordance with the terms hereof; or

(b) any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made; or

(c) any Loan Party shall default in the observance or performance of any agreement contained in clause (i) or (ii) of Section 6.4(a) (with respect to Holdings, the Borrower and the Canadian Borrower only), Section 6.7(a) or Section 7 of this Agreement or Sections 5.4 and 5.6(b) of the Guarantee and Collateral Agreement; or

(d) any Loan Party shall default in the observance or performance of any other agreement contained in this Agreement or any other Loan Document (other than as provided in paragraphs (a) through (c) of this Section), and such default shall continue unremedied for a period of 30 days after notice to the Borrower from the Administrative Agent or the Required Lenders; or

(e) any Significant Group Member shall (i) default in making any payment of any principal of any Indebtedness (including any Guarantee Obligation, but excluding the Loans) on the scheduled or original due date with respect thereto; or (ii) default in making any payment of any interest on any such Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or (iii) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable; *provided*, that a default, event or condition described in clause (i), (ii) or (iii) of this paragraph (e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in clauses (i), (ii) and (iii) of this paragraph (e) shall have occurred and be continuing

with respect to Indebtedness the outstanding principal amount of which exceeds in the aggregate $5,000,000; or

(f) (i) any Significant Group Member shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, monitor, conservator or other similar official for it or for all or any substantial part of its assets, or any Significant Group Member shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against any Significant Group Member any case, proceeding or other action of a nature referred to in clause (i) above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed or undischarged for a period of 90 days; or (iii) there shall be commenced against any Significant Group Member any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) any Significant Group Member shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) any Significant Group Member shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) (i) any Person shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan shall arise on the assets of any Group Member or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Required Lenders, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA, (v) any Group Member or any Commonly Controlled Entity shall, or in the reasonable opinion of the Required Lenders is likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan or (vi) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect; or

(h) one or more judgments or decrees shall be entered against any Significant Group Member involving in the aggregate a liability (not paid or fully covered by insurance as to which the relevant insurance company has acknowledged coverage) of $10,000,000 or more, and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within 30 days from the entry thereof; or

(i) any of the Security Documents shall cease, for any reason, to be in full force and effect, or any Loan Party or any Affiliate of any Loan Party shall so assert, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby; or

(j) the guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason, to be in full force and effect or any Loan Party or any Affiliate of any Loan Party shall so assert; or

(k) (i) the Permitted Investors shall cease to have the power to vote or direct the voting of securities having a majority of the ordinary voting power for the election of directors of Holdings (determined on a fully diluted basis); (ii) the Permitted Investors shall cease to own of record and beneficially an amount of common stock of Holdings equal to at least $66^{2}/_{3}$% of the amount of common stock of Holdings owned by the Permitted Investors of record and beneficially as of the Closing Date; (iii) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), excluding the Permitted Investors, shall become, or obtain rights (whether by means or warrants, options or otherwise) to become, the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of more than $33^{1}/_{3}$% of the outstanding common stock of Holdings; (iv) the board of directors of Holdings shall cease to consist of a majority of Continuing Directors; (v) Holdings shall cease to own and control, of record and beneficially, directly, 100% of each class of outstanding Capital Stock of the Borrower free and clear of all Liens (except Liens created by the Guarantee and Collateral Agreement); or (vi) a Specified Change of Control shall occur; or

(l) Holdings shall (i) conduct, transact or otherwise engage in, or commit to conduct, transact or otherwise engage in, any business or operations other than those incidental to its ownership of the Capital Stock of the Borrower, (ii) incur, create, assume or suffer to exist any Indebtedness or other liabilities or financial obligations, except (w) Indebtedness incurred pursuant to Section 7.2(f), (x) nonconsensual obligations imposed by operation of law, (y) obligations pursuant to the Loan Documents to which it is a party and (z) obligations with respect to its Capital Stock, or (iii) own, lease, manage or otherwise operate any properties or assets (including cash (other than cash received in connection with dividends made by the Borrower in accordance with Section 7.6 pending application in the manner contemplated by said Section) and cash equivalents) other than the ownership of shares of Capital Stock of the Borrower;

then, and in any such event, (A) if such event is an Event of Default specified in clause (i) or (ii) of paragraph (f) above with respect to the Borrower or the Canadian Borrower, automatically the Commitments shall immediately terminate and the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents (including all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) shall immediately become due and payable, and (B) if such event is any other Event of Default, either or both of the following actions may be taken: (i) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower and/or the Canadian Borrower declare the Revolving Commitments and/or the Canadian Revolving Commitments to be terminated forthwith, whereupon the Revolving Commitments and/or the Canadian Revolving Commitments shall immediately terminate; and (ii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower and/or the Canadian Borrower, declare the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents (including all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) to be due and payable forthwith, whereupon the same shall immediately become due and payable. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, the Borrower shall at such time deposit in a cash collateral account opened by the Administrative Agent an amount equal to the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts held in such cash collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other obligations of the Borrower hereunder and under the other Loan Documents. After all such Letters of Credit shall have expired or been fully drawn upon, all

Reimbursement Obligations shall have been satisfied and all other obligations of the Borrower hereunder and under the other Loan Documents shall have been paid in full, the balance, if any, in such cash collateral account shall be returned to the Borrower (or such other Person as may be lawfully entitled thereto). Except as expressly provided above in this Section, presentment, demand, protest and all other notices of any kind are hereby expressly waived by the Borrower.

8.2. *Right to Cure.* (a) Notwithstanding anything to the contrary contained in Section 8.1, in the event that the Borrower fails to comply with the requirements of any Financial Condition Covenant, until the expiration of the 10th day subsequent to the date the certificate calculating such Financial Condition Covenant is required to be delivered pursuant to Section 6.2(b), Holdings shall have the right to issue Permitted Cure Securities for cash or otherwise receive cash contributions to the capital of Holdings, and, in each case, to contribute any such cash to the capital of the Borrower (collectively, the "*Cure Right*"), and upon the receipt by the Borrower of such cash (the "*Cure Amount*") pursuant to the exercise by Holdings of such Cure Right and request to the Administrative Agent to effect such recalculation, such Financial Condition Covenant shall be recalculated giving effect to the following pro forma adjustments:

(i) Consolidated EBITDA shall be increased, solely for the purpose of measuring the Financial Condition Covenants and not for any other purpose under this Agreement, by an amount equal to the Cure Amount; and

(ii) if, after giving effect to the foregoing recalculations, the Borrower shall then be in compliance with the requirements of all Financial Condition Covenants, the Borrower shall be deemed to have satisfied the requirements of the Financial Condition Covenants as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of the Financial Condition Covenants that had occurred shall be deemed cured for the purposes of this Agreement.

(b) Notwithstanding anything herein to the contrary, (a) in each four-fiscal-quarter period there shall be at least two fiscal quarters in which the Cure Right is not exercised, (b) in each eight-fiscal-quarter period, there shall be a period of at least four consecutive fiscal quarters during which the Cure Right is not exercised, (c) the Cure Amount shall be no greater than the amount required for purposes of complying with the Financial Condition Covenants and (d) no Indebtedness repaid with the proceeds of Permitted Cure Securities shall be deemed repaid for the purposes of calculating the ratios specified in Section 7.1(a) or (b) for the period during which such Permitted Cure Securities were issued.

SECTION 9. THE AGENTS

9.1. *Appointment.* Each Lender hereby irrevocably designates and appoints the Administrative Agent as the agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent.

9.2. *Delegation of Duties.* The Administrative Agent may execute any of its duties under this Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent

shall not be responsible for the negligence or misconduct of any agents or attorneys in-fact selected by it with reasonable care.

9.3. *Exculpatory Provisions.* Neither any Agent nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party a party thereto to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party.

9.4. *Reliance by Administrative Agent.* The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex or teletype message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to Holdings or the Borrower), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement, all Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

9.5. *Notice of Default.* The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received notice from a Lender, Holdings, the Borrower or the Canadian Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders); *provided* that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

9.6. *Non-Reliance on Agents and Other Lenders.* Each Lender expressly acknowledges that neither the Agents nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by any Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be

deemed to constitute any representation or warranty by any Agent to any Lender. Each Lender represents to the Agents that it has, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

9.7. *Indemnification.* The Lenders agree to indemnify each Agent in its capacity as such (to the extent not reimbursed by Holdings, the Borrower or the Canadian Borrower and without limiting the obligation of Holdings, the Borrower or the Canadian Borrower to do so), ratably according to their respective Aggregate Exposure Percentages in effect on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Aggregate Exposure Percentages immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing; *provided* that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder.

9.8. *Agent in Its Individual Capacity.* Each Agent and its affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though such Agent were not an Agent. With respect to its Loans made or renewed by it and with respect to any Letter of Credit issued or participated in by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

9.9. *Successor Administrative Agent.* The Administrative Agent may resign as Administrative Agent upon 30 days' notice to the Lenders, the Borrower and the Canadian Borrower. If the Administrative Agent shall resign as Administrative Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall (unless an Event of Default shall have occurred and be continuing) be subject to approval by the Borrower and/or the Canadian Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the

rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Loans. If no successor agent has accepted appointment as Administrative Agent by the date that is 30 days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

9.10. *Documentation Agents and Syndication Agent.* Neither the Documentation Agents nor the Syndication Agent shall have any duties or responsibilities hereunder in its capacity as such.

SECTION 10. MISCELLANEOUS

10.1. *Amendments and Waivers.* Neither this Agreement, any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 10.1. The Required Lenders and each Loan Party party to the relevant Loan Document may, or, with the written consent of the Required Lenders, the Administrative Agent and each Loan Party party to the relevant Loan Document may, from time to time, (a) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (b) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; *provided*, *however*, that no such waiver and no such amendment, supplement or modification shall (i) reduce or forgive the principal amount or extend the final scheduled date of maturity of any Loan, extend the scheduled date of any amortization payment in respect of any Term Loan, reduce the stated rate of any interest or fee payable hereunder (except (x) in connection with the waiver of applicability of any post-default increase in interest rates (which waiver shall be effective with the consent of the Majority Facility Lenders of each adversely affected Facility) and (y) that any amendment or modification of defined terms used in the financial covenants in this Agreement shall not constitute a reduction in the rate of interest or fees for purposes of this clause (i)) or extend the scheduled date of any payment thereof, or increase the amount or extend the expiration date of any Lender's Revolving Commitment or Canadian Revolving Commitment, in each case without the written consent of each Lender directly affected thereby; (ii) eliminate or reduce the voting rights of any Lender under this Section 10.1 without the written consent of such Lender; (iii) reduce any percentage specified in the definition of Required Lenders, consent to the assignment or transfer by the Borrower or the Canadian Borrower of any of its rights and obligations under this Agreement and the other Loan Documents, release all or substantially all of the Collateral or release all or substantially all of the Subsidiary Guarantors from their obligations under the Guarantee and Collateral Agreement, in each case without the written consent of all Lenders; (iv) amend, modify or waive any provision of Section 2.17 without the written consent of the Majority Facility Lenders in respect of each Facility adversely affected thereby; (v) reduce the amount of Net Cash Proceeds or Excess Cash Flow required to be applied to prepay Loans under this Agreement without the written consent of the Majority Facility Lenders with respect to each Facility adversely affected thereby; (vi) reduce the percentage specified in the definition of Majority Facility Lenders with respect to any Facility without the written consent of all Lenders under such Facility; (vii) amend, modify or waive any provision of Section 9 without the written consent of the Administrative Agent; (viii) amend, modify or

waive any provision of Section 2.6 or 2.7 without the written consent of the Swingline Lender; or (ix) amend, modify or waive any provision of Section 3 without the written consent of the Issuing Lender. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Administrative Agent and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent, the Borrower and the Canadian Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and Revolving Extensions of Credit and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders and Majority Facility Lenders.

In addition, notwithstanding the foregoing, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower, the Canadian Borrower and the Lenders providing the relevant Replacement Term Loans (as defined below) to permit the refinancing, replacement or modification of all outstanding Tranche B Term Loans or Tranche C Term Loans ("*Replaced Term Loans*") with a replacement term loan tranche hereunder ("*Replacement Term Loans*"), *provided* that (a) the aggregate principal amount of such Replacement Term Loans shall not exceed the aggregate principal amount of such Replaced Term Loans, (b) the Applicable Margin for such Replacement Term Loans shall not be higher than the Applicable Margin for such Replaced Term Loans and (c) the weighted average life to maturity of such Replacement Term Loans shall not be shorter than the weighted average life to maturity of such Replaced Term Loans at the time of such refinancing.

10.2. *Notices.* All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three Business Days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice, when received, addressed as follows in the case of Holdings, the Borrower, the Canadian Borrower and the Administrative Agent,

and as set forth in an administrative questionnaire delivered to the Administrative Agent in the case of the Lenders, or to such other address as may be hereafter notified by the respective parties hereto:

Holdings, Borrower and Canadian Borrower:	2481 Manana Drive Dallas, Texas 75220 Attention: Chief Financial Officer Telecopy: 214-357-1536 Telephone: 214-357-9588 With a copy to: Wellspring Capital Management LLC Lever House 390 Park Avenue New York, NY 10022-4608 Telecopy: 212-318-9810 Telephone: 212-318-9898 Attention: Greg S. Feldman
Administrative Agent:	JPMorgan Chase Bank, N.A. Loan and Agency Services 1111 Fannin Street, 11th Floor Houston, TX 77002-8069 Attention: Stacey L. Ahrendt Telecopy: 713-750-2666 With a copy to: JPMorgan Chase Bank, N.A. 270 Park Avenue New York, NY 10017 Attention: Matthew Massie Telecopy: 212-270-5100

provided that any notice, request or demand to or upon the Administrative Agent or the Lenders shall not be effective until received.

Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

10.3. *No Waiver; Cumulative Remedies.* No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

10.4. *Survival of Representations and Warranties.* All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered

pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

10.5. *Payment of Expenses and Taxes*. Each of the Borrower and the Canadian Borrower agrees (a) to pay or reimburse the Administrative Agent for all its reasonable out-of-pocket costs and expenses incurred in connection with the development, preparation and execution of, and any amendment, supplement or modification to, this Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby, including the reasonable fees and disbursements of counsel to the Administrative Agent and filing and recording fees and expenses, with statements with respect to the foregoing to be submitted to the Borrower prior to the Closing Date (in the case of amounts to be paid on the Closing Date) and from time to time thereafter on a quarterly basis or such other periodic basis as the Administrative Agent shall deem appropriate, (b) to pay or reimburse each Lender and the Administrative Agent for all its costs and expenses incurred in connection with the enforcement or preservation of any rights under this Agreement, the other Loan Documents and any such other documents, including the fees and disbursements of counsel (including the allocated fees and expenses of in-house counsel) to each Lender and of counsel to the Administrative Agent, (c) to pay, indemnify, and hold each Lender and the Administrative Agent harmless from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp and excise taxes, if any, that may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Loan Documents and any such other documents, and (d) to pay, indemnify, and hold each Lender and the Administrative Agent and their respective officers, directors, employees, affiliates, agents and controlling persons (each, an "*Indemnitee*") harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents and any such other documents, including any of the foregoing relating to the use of proceeds of the Loans or the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of any Group Member or any of the Properties and the reasonable fees and expenses of legal counsel in connection with claims, actions or proceedings by any Indemnitee against any Loan Party under any Loan Document (all the foregoing in this clause (d), collectively, the "*Indemnified Liabilities*"), *provided*, that neither the Borrower nor the Canadian Borrower shall have any obligation hereunder to any Indemnitee with respect to Indemnified Liabilities to the extent such Indemnified Liabilities are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnitee. Without limiting the foregoing, and to the extent permitted by applicable law, each of the Borrower and the Canadian Borrower agrees not to assert and to cause its Subsidiaries not to assert, and hereby waives and agrees to cause its Subsidiaries to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnitee. All amounts due under this Section 10.5 shall be payable not later than 10 days after written demand therefor. Statements payable by the Borrower or the Canadian Borrower pursuant to this Section 10.5 shall be submitted to 2481 Manana Drive, Dallas, Texas 75220 Attention: Chief Financial Officer (Telephone No. 214-357-9588) (Telecopy No. 214-357-1536), at the address of the Borrower or the Canadian Borrower set forth in Section 10.2, or to such other Person or address as may be hereafter designated by the Borrower or the Canadian Borrower in a written notice to the Administrative Agent. The agreements in this Section 10.5 shall survive repayment of the Loans and all other amounts payable hereunder.

10.6. *Successors and Assigns; Participations and Assignments*. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any affiliate of the Issuing Lender that issues any Letter of Credit), except that (i) the Borrower and the Canadian Borrower may not assign or otherwise transfer any of their rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower or the Canadian Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees or, in the case of the Canadian Revolving Facility, to an Eligible Canadian Assignee (in each case, an "*Assignee*") all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it) with the prior written consent of:

(A) the Borrower (such consent not to be unreasonably withheld), *provided* that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund (as defined below) or, if an Event of Default has occurred and is continuing, any other Person; and

(B) the Administrative Agent, *provided* that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitments or Loans under any Facility, the amount of the Commitments or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 (or, in the case of the Tranche B Term Facility, the Tranche C Term Facility and the Canadian Revolving Facility, $1,000,000) unless each of the Borrower and the Administrative Agent otherwise consent, *provided* that (1) no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its affiliates or Approved Funds, if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500; and

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire.

For the purposes of this Section 10.6, "*Approved Fund*" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) below, from and after the effective date specified in each Assignment and Assumption the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and

Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits and subject to the limitations and requirements of Sections 2.18, 2.19, 2.20 and 10.5). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.6 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "*Register*"). The entries in the Register shall be conclusive, and the Borrower, the Canadian Borrower, the Administrative Agent, the Issuing Lender and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Canadian Borrower, the Issuing Lender and any Lender, at any reasonable time and from time to time upon reasonable prior notice. This Section 10.6(b)(iv) shall be construed so that the Term Loans and the Revolving Loans, the Canadian Revolving Loans and the Additional Revolving Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any other relevant or successor provisions of the Code or such regulations).

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an Assignee, the Assignee's completed administrative questionnaire (unless the Assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b)(ii)(B) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a "*Participant*") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans owing to it); *provided* that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Canadian Borrower, the Administrative Agent, the Issuing Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to the proviso to the second sentence of Section 10.1 and (2) directly affects such Participant. Subject to paragraph (c)(ii) of this Section, each of the Borrower and the Canadian Borrower agrees that each Participant shall be entitled, through the participating Lender, to the benefits of Sections 2.18, 2.19 and 2.20 to the same extent and subject to the same limitations and requirements of such Sections as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent

permitted by law, each Participant also shall be entitled to the benefits of Section 10.7(b) as though it were a Lender, provided such Participant shall be subject to Section 10.7(a) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.18 or 2.19 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. Any Participant that is a Non-U.S. Person shall not be entitled to the benefits of Section 2.19 unless such Participant complies with Section 2.19(d) and (e) and agrees, for the benefit of the Borrower and the Canadian Borrower, to comply with Section 2.19(f).

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including (i) any pledge or assignment to secure obligations to a Federal Reserve Bank and (ii) any pledge or assignment to any holders of obligations owed, or securities issued, by such Lender including to any trustee for, or any other representative of, such holders, and this Section shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(e) Each of the Borrower and the Canadian Borrower, upon receipt of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in paragraph (d) above.

(f) Notwithstanding the foregoing, any Conduit Lender may assign any or all of the Loans it may have funded hereunder to its designating Lender without the consent of the Borrower or the Administrative Agent and without regard to the limitations set forth in Section 10.6(b). Each of Holdings, the Borrower, the Canadian Borrower, each Lender and the Administrative Agent hereby confirms that it will not institute against a Conduit Lender or join any other Person in instituting against a Conduit Lender any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding under any state bankruptcy or similar law, for one year and one day after the payment in full of the latest maturing commercial paper note issued by such Conduit Lender; *provided*, however, that each Lender designating any Conduit Lender hereby agrees to indemnify, save and hold harmless each other party hereto for any loss, cost, damage or expense arising out of its inability to institute such a proceeding against such Conduit Lender during such period of forbearance.

10.7. *Adjustments; Set-off.* (a) Except to the extent that this Agreement expressly provides for payments to be allocated to a particular Lender or to the Lenders under a particular Facility, if any Lender (a "*Benefitted Lender*") shall receive any payment of all or part of the Obligations owing to it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 8.1(f), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefitted Lender shall purchase for cash from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; *provided*, *however*, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) In addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, without prior notice to Holdings, the Borrower or the Canadian Borrower, any such notice being expressly waived by Holdings, the Borrower and the Canadian Borrower to the extent permitted

by applicable law, upon any amount becoming due and payable by Holdings, the Borrower or the Canadian Borrower hereunder (whether at the stated maturity, by acceleration or otherwise), to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of Holdings, the Borrower or the Canadian Borrower, as the case may be. Each Lender agrees promptly to notify the Borrower, the Canadian Borrower and the Administrative Agent after any such setoff and application made by such Lender, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

10.8. *Counterparts.* This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

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

10.10. *Integration.* This Agreement and the other Loan Documents represent the entire agreement of Holdings, the Borrower, the Canadian Borrower, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

10.11. ***GOVERNING LAW.*** **THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

10.12. *Submission To Jurisdiction; Waivers.* Each of Holdings, the Borrower and the Canadian Borrower hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of New York, the courts of the United States for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to Holdings, the Borrower or the Canadian Borrower, as the case may be at its address set forth in Section 10.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

10.13. *Acknowledgements.* Each of Holdings, the Borrower and the Canadian Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) neither the Administrative Agent nor any Lender has any fiduciary relationship with or duty to Holdings, the Borrower or the Canadian Borrower arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between Administrative Agent and Lenders, on one hand, and Holdings, the Borrower and the Canadian Borrower, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among Holdings, the Borrower, the Canadian Borrower and the Lenders.

10.14. *Releases of Guarantees and Liens.* (a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent is hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender except as expressly required by Section 10.1) to take any action requested by the Borrower having the effect of releasing any Collateral or guarantee obligations (i) to the extent necessary to permit consummation of any transaction not prohibited by any Loan Document or that has been consented to in accordance with Section 10.1 or (ii) under the circumstances described in paragraph (b) below.

(b) At such time as the Loans, the Reimbursement Obligations and the other obligations under the Loan Documents (other than obligations under or in respect of Swap Agreements) shall have been paid in full, the Commitments have been terminated and no Letters of Credit shall be outstanding, the Collateral shall be released from the Liens created by the Security Documents, and the Security Documents and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Loan Party under the Security Documents shall terminate, all without delivery of any instrument or performance of any act by any Person.

10.15. *Confidentiality.* Each of the Administrative Agent and each Lender agrees to keep confidential all non-public information provided to it by any Loan Party, the Administrative Agent or any Lender pursuant to or in connection with this Agreement that is designated by the provider thereof as confidential; *provided* that nothing herein shall prevent the Administrative Agent or any Lender from disclosing any such information (a) to the Administrative Agent, any other Lender or any affiliate thereof (it being understood that the Persons to whom such disclosure is being made will be informed of the confidential nature of such information and instructed to keep such information confidential), (b) subject to an agreement to comply with the provisions of this Section, to any actual or prospective Transferee or any direct or indirect counterparty to any Swap Agreement (or any professional advisor to such counterparty), (c) to its employees, directors, agents, attorneys, accountants and other professional advisors or those of any of its affiliates (it being understood that the Persons to whom such disclosure is being made will be informed of the confidential nature of such information and instructed to keep such information confidential), (d) upon the request or demand of any Governmental Authority, (e) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law, (f) if requested or required to do so in connection with any litigation or similar proceeding, (g) that has been publicly disclosed, (h) to

the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender, or (i) in connection with the exercise of any remedy hereunder or under any other Loan Document.

10.16. ***WAIVERS OF JURY TRIAL.*** **HOLDINGS, THE BORROWER, THE CANADIAN BORROWER, THE ADMINISTRATIVE AGENT AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.**

10.17. *Delivery of Addenda.* Each initial Lender shall become a party to this Agreement by delivering to the Administrative Agent an Addendum duly executed by such Lender.

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

WS MIDWAY HOLDINGS, INC.

By: _____

Name:
Title:

DAVE & BUSTER'S, INC.

By: _____

Name:
Title:

6131646 CANADA INC.

By: _____

Name:
Title:

JPMORGAN CHASE BANK, N.A., as
Administrative Agent and as a Lender

By: _____

Name:
Title:

BANK OF AMERICA, N.A., as Syndication Agent
and as a Lender

By: _____

Name:
Title:

WELLS FARGO BANK, N.A., as Documentation Agent and as a Lender

By: _____

Name:
Title:

CIT LENDING SERVICES CORPORATION, as
Documentation Agent and as a Lender

By: _____

Name:
Title:

Exhibit 10.2

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (herein the "Agreement") is made as of the 3rd day of April, 2000, by and between DAVE & BUSTER'S, INC. (the "Corporation") and [James W. Corley][David O. Corriveau] (the "Employee").

RECITALS

A. The Corporation has offered continued employment to Employee for what it believes to be a reasonable compensation package in light of the required duties, responsibilities and restrictions. Employee has accepted such offer of continued employment subject to the terms set forth herein.

B. The Corporation and Employee desire to set forth in writing the terms and conditions of their agreements and understandings with respect to the continued employment of Employee by the Corporation.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual premises and the covenants and promises contained herein, as well as good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Corporation and Employee hereby agree as follows:

1. Employment. The Corporation hereby employs, engages and hires Employee, and Employee hereby accepts such employment and agrees to such hiring and engagement, upon the terms and conditions hereinafter set forth.

2. Duties. Employee shall be employed as Co-Chief Executive Officer and [Chief Operating Officer] [President] of the Corporation for the entire term of his employment as set forth in this Agreement and shall faithfully and to the best of his abilities perform the following duties:

2.1 Employee shall have supervisory and oversight responsibility for the Corporation. He shall have active management of the business and affairs of the Corporation. He shall see that all orders and resolutions of the Board of Directors of the Corporation (herein "Board of Directors") are carried into effect.

2.2 Employee shall, when authorized by the Board of Directors, when required by law or when the ordinary conduct of the Corporation's business requires, execute, in the name of the Corporation, such contracts, documents, papers or instruments on behalf of the Corporation to further its operations and business interests.

2.3 Employee shall perform such other duties and responsibilities as may be prescribed from time to time by the Board of Directors. Such other executive duties or responsibilities shall be consistent with the duties of the office of Co-Chief Executive Officer and [Chief Operating Officer] [President].

Employee shall devote substantially all of his time and attention to the Corporation's business and affairs to carry out such responsibilities and shall not engage in any active management role or own, directly or indirectly, more than a ten percent (10%) interest in any other business activity except as authorized by the Board of Directors.

3. Term. The initial term of the employment of Employee by the Corporation pursuant to this Agreement shall begin on the date hereof and shall continue for an initial period of one year, unless sooner terminated as hereinafter provided. Unless terminated as hereinafter provided, the term of this Agreement shall be continually renewed after the initial term on a rolling one year basis such that at any point in time there shall always be a period of one year remaining on the term of this Agreement.

4. Compensation.

4.1 Pre-termination. The Corporation shall pay Employee a salary (payable in accordance with the Corporation's usual payment practices, but not less frequently than monthly) for his services under this Agreement beginning at an annual rate from the date hereof of Four Hundred Thousand Dollars ($400,000.00). Employee's annual salary may not be decreased but may be adjusted upward at any time by the Board of Directors of the Corporation. Compensation to Employee hereunder shall be prorated for any partial employment period. Employee shall also participate in the executive incentive bonus plan and in any other bonus arrangement mutually agreed between Employee and Corporation.

4.2 Post-termination. Upon each of the first ten (10) anniversary dates of the termination of this Agreement, Corporation shall pay to Employee, or Employee's estate in the event of Employee's death, the sum of One Hundred Thousand Dollars ($100,000.00). In exchange therefor, Employee, on behalf of himself and his heirs, grants to Corporation the right to use the personal identity of Employee in connection with the Corporation's marketing concept for such ten year period. The provisions of this Paragraph 4.2 shall be treated as if deleted from this Agreement if Employee's employment is terminated for Cause pursuant to Paragraph 7.3.

5. Benefits. In addition to the compensation provided in Paragraph 4, Corporation shall provide Employee with the benefits described herein. The amounts provided are a minimum and shall not be reduced during the term hereof, but may be increased by the Board of Directors or the Compensation Committee appointed by the Board of Directors.

5.1 Automobile. During the term of this Agreement, the Corporation shall provide an automobile allowance to Employee of Fifteen Thousand Dollars ($15,000.00) per fiscal year (with a pro rated amount for any partial fiscal year).

5.2 Vacations, Holidays, Etc. During the term of this Agreement, Employee shall be entitled to six (6) weeks vacation per calendar year. Unused vacation periods may not be carried over to subsequent years.

5.3 Health Insurance and Death Benefits. Employee shall be provided group medical and life insurance comparable to the standard medical and life insurance coverage afforded other senior executive officers of the Corporation. The Corporation shall also provide Employee with an allowance of Seven Thousand Five Hundred Dollars ($7,500.00) per fiscal year (with a pro rata amount for any partial fiscal year) for his use in purchasing additional insurance coverage for medical, dental, hospitalization and death benefits or in payment of any uninsured expenses or deductible payments not covered by the medical insurance provided hereunder.

5.4 Disability Insurance. Employee shall be provided group disability insurance comparable to the standard disability insurance coverage afforded other senior executive officers of the Corporation. The Corporation shall also provide Employee with an allowance of Four Thousand Five Hundred Dollars ($4,500.00) per fiscal year (with a pro rated amount for any partial fiscal year) to purchase disability insurance.

5.5 Reimbursement of Expenses. Upon submission of appropriate receipts and other documents, the Corporation shall reimburse Employee for the reasonable business expenses (other than automobile expenses) incurred by Employee in fulfilling his duties hereunder.

5.6 Other Benefits. The Corporation shall provide to Employee such benefits, other than those benefits expressly provided for in this Agreement, which are generally made available to other senior executive officers of the Corporation.

6. Non-Compete Agreement.

6.1 Covenant. Employee agrees not to engage in or become an employee of or consultant or adviser of or have any direct or indirect interest in any other person, firm, corporation or other entity engaged in, any business activities directly competitive with the business of the Corporation or any of its subsidiaries or licensees during the term of his employment by the Corporation and for a period of six (6) months thereafter. The period of time under which the Employee is to be bound by this covenant is hereinafter referred to as the "Non-Compete Period". This restriction shall be applicable with respect to each and every county and metropolitan area in the United States and each country in which a licensee is located. Nothing contained in this Paragraph 6.1 shall restrict Employee from operating a restaurant and/or bar, provided, however, such restaurant and/or bar may not use or operate under any service mark or trade name similar to "Dave & Buster's".

6.2 Employees. During the Non-Compete Period, Employee will not knowingly seek to induce any employee of the Corporation or any of its affiliates to leave his or her employment.

7. Termination. The employment of Employee hereunder shall terminate prior to the expiration of the term of employment set forth in Paragraph 3 above upon the happening of any one of the following events:

7.1 Death. The death of Employee.

7.2 Disability. The giving of written notice by the Corporation to Employee of the termination of the employment of Employee upon the disability of Employee. For purposes of this Paragraph, "disability of Employee" shall mean the inability of Employee, due to illness, accident or any other physical or mental incapacity, to perform the services provided for hereunder for a period of one hundred eighty (180) consecutive calendar days. The inability of Employee to perform the services provided for hereunder due to his illness, accident or any other physical or mental incapacity shall not constitute a basis for discharge under Paragraph 7.4 of this Agreement except to the extent there is also a basis for discharge under this Paragraph 7.2.

7.3 Cause. The giving of written notice by the Corporation to Employee of the termination of the employment of Employee for cause. For purposes of this Paragraph, "cause" shall mean: (i) a material violation of Corporation policy or a material breach by the Employee of the Employee's obligations under Paragraph 2 (other than as a result of incapacity due to physical or mental illness) that is demonstrably willful and deliberate on the Employee'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 Corporation, and, if subject to being effectively remedied, is not remedied in a reasonable period of time after receipt of written notice from the Corporation specifying such breach or violation; or (ii) the conviction of the Employee of a felony involving moral turpitude. Upon Employee's termination pursuant to the foregoing provisions of this Paragraph 7, the Corporation shall promptly pay to Employee (or his estate, heirs or personal representatives), the full amount of his compensation and benefits accrued through the termination date.

7.4 Without Cause. The Corporation may also terminate the employment of Employee hereunder for any other reason upon at least ninety (90) days written notice prior to the expiration of the initial term or any additional one year term provided in Paragraph 3; provided that upon Employee's termination by the Corporation for any reason other than those set forth in Paragraphs 7.1, 7.2, or 7.3, (a "Termination Without Cause"), the Corporation shall, until the Final Payment Date (as hereinafter defined) (i) continue to pay Employee his then current salary pursuant to Paragraph 4 and (ii) pay Employee the greater of: (a) the maximum bonus payable to Employee under the executive incentive plan in effect ninety days prior to such termination, or (b) sixty percent (60%) of the annual salary then in effect, and (iii) provide the benefits described

in Paragraphs 5.1, 5.3 and 5.4 or their economic equivalent on a pre-tax basis. The Final Payment Date shall be two years after the date of such termination. Upon Employee's termination pursuant to this Subparagraph 7.4, the Corporation within thirty (30) days shall pay in a lump sum to Employee (or his estate, heirs or personal representative) the full amount of his compensation and benefits computed through the Final Payment Date.

7.5 Removal from Board of Directors. If, at any time during the term of this Agreement, Employee is removed from the Board of Directors of the Corporation or at the expiration of his term as a director is not renominated to serve as a director of the Corporation by the Board of Directors of the Corporation (or by any nominating committee of the Board of Directors), and the cause of such removal or failure to nominate is not the result of Employee's unwillingness to serve as a director of the Corporation or any reason set forth in Paragraphs 7.1, 7.2, or 7.3, then Employee may elect to terminate his employment hereunder and such termination shall be deemed a Termination Without Cause.

7.6 By Employee. Employee may elect to terminate his employment hereunder at any time upon at least ninety (90) days written notice prior to the expiration of the initial term or any additional one year term provided in Paragraph 3.

8. Return of Property. Each party shall promptly deliver to the other all of the other's property in its possession after termination of this Agreement.

9. Previous Employment Agreement. The Employment Agreement dated June 16, 1995 between Employee and Corporation (the "Previous Employment Agreement") shall terminate upon effectiveness of this Agreement.

10. Maintenance of Employee's Domicile. Employee shall not be required to relocate his personal residence in order to fulfill his duties under this Agreement without his prior consent. If the Corporation requires Employee to relocate his personal residence without the consent of Employee, Employee may terminate his employment hereunder and such termination shall be deemed a Termination Without Cause.

11. Damages and Irreparable Injury. In the event of a breach of this Agreement by either the Corporation or Employee resulting in damages to the other party, that party may recover from the party breaching the Agreement any and all damages that may be sustained. In the event of a breach of Paragraphs 6 or 12, Employee acknowledges that such a breach may result in irreparable injury and damage to the Corporation that would be difficult, if not impossible, to determine with certainty and specificity, that the Corporation would have no adequate remedy at law therefor and that the Corporation may thereupon (a) obtain such preliminary, temporary or permanent mandatory or restraining injunctions, orders or decrees as are necessary to protect the Corporation against, or on account of, any such breach and (b) obtain any other relief against Employee (including damages) as may be provided by law or in equity.

12. Confidential Information. The Employee shall hold in a fiduciary capacity for the benefit of the Corporation all secret or confidential information, knowledge or data relating to the Corporation or any of its affiliated companies, and their respective businesses, which shall have been obtained by the Employee during the Employee's employment by the Corporation or any of its affiliated companies and which shall not be or have become public knowledge (other than by acts by the Employee or representatives of the Employee in violation of this Agreement). After termination of the Employee's employment with the Corporation, the Employee shall not, without the prior written consent of the Corporation 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 Corporation and those designated by it. In no event shall an asserted violation of the provisions of this Paragraph 12 constitute a basis for deferring or withholding any amounts otherwise payable to the Employee under this Agreement.

13. Indemnity of Employee. The Corporation shall indemnify and hold Employee harmless for all losses, claims, damages, causes of action and judgments (herein "Losses") sustained by Employee as a direct result of the discharge of his duties required by this Agreement; provided, however, such indemnification shall not cover Losses sustained by Employee as a result of Employee's gross negligence, willful misconduct, fraud or dishonesty.

14. Miscellaneous.

14.1 Waiver. The waiver by either party of a breach of any provision of this Agreement shall not operate as or be construed as a waiver of any subsequent breach thereof.

14.2 Headings. Headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

14.3 Counterpart Execution. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

14.4 Assignment. Neither this Agreement, nor any of the rights or obligations of either party hereunder, may be assigned in whole or in part, except with the written consent of the other party; provided, however, that all or any part of the Corporation's right and obligations hereunder may be assigned by the Corporation without the consent of Employee to any affiliate or, if the business or assets of the Corporation are sold to a third party, to such third party, subject to the rights of Employee set forth herein above concerning Employee's option for termination.

14.5 Attorney's Fees and Costs. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which he may be entitled.

14.6 Invalid Provision. If a court of competent jurisdiction determines that any restriction contained in this Agreement is void, illegal or unenforceable, the other provisions shall remain in full force and effect and the provision held to be void, illegal or unenforceable shall be limited so that it shall remain in effect to the extent permissible by law.

14.7 Modification. No modification, amendment, change or discharge of any term or provision of this Agreement shall be valid or binding unless the same is in writing and signed by all the parties hereto.

14.8 Entire Agreement. Except as otherwise provided in this Subparagraph 14.8, this Agreement constitutes the entire agreement and understanding of the parties on the subject hereof and supersede all prior written and/or oral agreements, representations and understandings related to the subject matter hereof.

This Agreement is entered into at the same time as an agreement styled Executive Retention Agreement ("ERA") between Corporation and Employee. Under the terms of the ERA, the ERA becomes effective upon a "Change of Control" as that term is defined in the ERA. Once the ERA becomes effective and until such time as it ceases to be effective, the ERA shall have precedence over this Agreement in defining the rights and duties of Corporation and Employer; provided, further for clarification, it is not intended that Employee will receive duplicate economic benefits during the time the ERA is effective. The terms of this Agreement not inconsistent with the ERA, including, but not limited to the provisions of Subparagraph 4.2, shall continue to apply. After the ERA ceases to be effective, all terms of this Agreement shall again be effective, unless this Agreement is otherwise terminated.

14.9 Notice. Any notice which either party may wish to give to the other party hereunder shall be deemed to have been given when delivered personally or by commercial courier or three days after being deposited in the mail, certified and with proper postage prepaid, if addressed as follows:

To the Corporation:

Dave & Buster's, Inc.
2481 Manana Drive
Dallas, TX 75220
Attn.: General Counsel

To Employee:

or to such other address as the parties may designate for themselves from time to time by written notice to the other party given in the aforesaid manner.

14.10 Binding Effect. The provisions hereof shall be binding upon and shall inure to the benefit of Employee, his heirs and personal representatives.

14.11 Affiliate. The term "affiliate" or "affiliates" as used herein shall mean any person, partnership or entity which, directly or indirectly through one or more intermediaries, is controlled by, controls, or is under common control with the person or entity specified.

14.12 Applicable Law. 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.

EXECUTED this 3rd day of April, 2000.

THE CORPORATION:

DAVE & BUSTER'S, INC., a Missouri corporation

By: _____
Name: _____
Title: _____

EMPLOYEE:

_____

[James W. Corley][David O. Corriveau]

EXECUTIVE RETENTION AGREEMENT

AGREEMENT by and between Dave & Buster's, Inc. (the "COMPANY"), and [James W. Corley][David O. Corriveau] (the "EXECUTIVE"), dated as of the 3rd day of April, 2000.

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 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.

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 first 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) Special Bonus. In addition to Annual Base Salary and Annual Bonus payable as herein above provided, if the Executive remains employed with the Company and its affiliated companies through the first anniversary of the Effective Date, the Company shall pay to the Executive a special bonus (the "SPECIAL BONUS") in recognition of the Executive's services during the crucial one-year transition period following the Change of Control. Such Special Bonus shall be an amount in cash equal to the sum of (A) the Executive's Annual Base Salary and (B) the Annual Bonus paid or payable, including by reason of any deferral, to the Executive (and annualized for any fiscal year consisting of less than twelve full months or for which the Executive has been employed for less than twelve full months) for the most recently completed fiscal year during the Employment Period. The Special Bonus shall be paid no later than 30 days following the first anniversary of the Effective Date.

(iv) 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.

(v) 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.

(vi) 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.

(vii) 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.

(viii) 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.

(ix) 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'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) the Special Bonus, if due to the Executive pursuant to Section 4(b)(iii), to the extent not theretofore paid and (4) 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), (3) and (4) 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 times the sum of (x) the Executive's Annual Base Salary and (y) the Annual Bonus; provided, however, that if the Special Bonus has not been paid to the Executive, such amount shall be increased by the amount of the Special Bonus; and, provided further, 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 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 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 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 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 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:

(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.

(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:

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 this Agreement is entered into at the same time as an agreement styled Employment Agreement between Executive and Company. Once this Agreement becomes effective upon a Change of Control, and until such time as it ceases to be effective, this Agreement shall have precedence over the Employment Agreement in defining the rights and duties of Executive and Company.

(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) Simultaneously with the execution of this Agreement, the Company is executing that certain agreement styled "Dave & Buster's, Inc. Executive Retention Agreement Trust". The Company covenants with Executive to: (i) procure the execution by Wachovia Bank of North Carolina, N.A., as Trustee pursuant to such agreement; 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.

[James W. Corley] [David O. Corriveau]

Dave & Buster's, Inc.

By: _____

Its: _____

Exhibit 10.3

EXECUTIVE RETENTION AGREEMENT

AGREEMENT by and between Dave & Buster's, Inc. (the "COMPANY"), and _____ (the "EXECUTIVE"), dated as of _____.

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 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'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 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 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:

(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.

(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:

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 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.

(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.

[Executive]

Dave & Buster's, Inc.

By: /s/ David O. Corriveau

Its: President

Exhibit 10.4

ASSET PURCHASE AGREEMENT

dated as of September 24, 2004

by and among

TANGO ACQUISITION, INC.,
DAVE & BUSTER'S, INC.,
JBC ACQUISITION CORPORATION,
GEMINI INVESTORS III, L.P.,

and

JILLIAN'S ENTERTAINMENT HOLDINGS, INC.
JILLIAN'S ENTERTAINMENT CORPORATION
JILLIAN'S BILLIARD CAFE OF AKRON, INC.
JILLIAN'S BILLIARD CAFE OF COLUMBIA, SOUTH CAROLINA, INC.
JILLIAN'S BILLIARD CAFE OF RALEIGH, NORTH CAROLINA, INC.
JILLIAN'S BILLIARD CLUB OF CHARLOTTE, NC, INC.
JILLIAN'S BILLIARD CLUB OF LOUISVILLE, KENTUCKY, INC.
JILLIAN'S BILLIARD CLUB OF MANCHESTER, NH, INC.
JILLIAN'S BILLIARD CLUB OF PASADENA, INC.
JILLIAN'S BILLIARD CLUB OF SEATTLE, INC.
JILLIAN'S MANAGEMENT COMPANY, INC.
JILLIAN'S OF ARUNDEL, MD, INC.
JILLIAN'S OF CHAMPAIGN-URBANA, IL, L.P.
JILLIAN'S BILLIARD CLUB OF CLEVELAND, INC.
JILLIAN'S BILLIARD CLUB OF CLEVELAND HEIGHTS LIMITED PARTNERSHIP
JILLIAN'S OF ALBANY, NY, INC.
JILLIAN'S OF CONCORD, NC, INC.
JILLIAN'S OF COVINGTON, KENTUCKY, INC.
JILLIAN'S OF FARMINGDALE, NY, INC.
JILLIAN'S OF FRANKLIN, PA, INC.
JILLIAN'S OF GWINNETT, GA, INC.
JILLIAN'S OF HOLLYWOOD, CA, INC.
JILLIAN'S OF HOUSTON, TX, INC.
JILLIAN'S OF INDIANAPOLIS, IN, INC.
JILLIAN'S OF KATY, TX, INC.
JILLIAN'S OF MINNEAPOLIS, MN, INC.
JILLIAN'S OF NASHVILLE, TN, INC.
JILLIAN'S OF NORFOLK VA, INC.
JILLIAN'S OF SAN FRANCISCO, CA, INC.
JILLIAN'S OF SCOTTSDALE, AZ, INC.
JILLIAN'S OF WESTBURY, NY, INC.
JILLIAN'S BILLIARD CLUB OF WORCESTER LIMITED PARTNERSHIP
JILLIAN'S OF YOUNGSTOWN, OH, INC.
JILLIAN'S VENDING LIMITED PARTNERSHIP
RIVER VENDING, INC.
JILLIAN'S AMERICA LIVE OF MINNEAPOLIS, INC.

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "*Agreement*") is dated as of September 24, 2004, by and among Tango Acquisition, Inc., a Delaware corporation ("*Tango"*) and a wholly owned subsidiary of Dave & Buster's, Inc., a Missouri corporation and sole stockholder of Tango ("*D&B*"), JBC Acquisition Corporation, a Delaware corporation ("*JBC*") and an affiliate of Gemini Investors III, L.P., a Delaware limited partnership ("*Gemini*"), Jillian's Entertainment Holdings, Inc., a Delaware corporation ("*Sellers' Representative*"), Jillian's Entertainment Corporation, a Florida corporation ("*JEC*"), and each of the following entities (collectively, the "*Sellers*" and each individually, a "*Seller*"): Jillian's Billiard Cafe of Akron, Inc., a Delaware corporation, Jillian's Billiard Cafe of Columbia, South Carolina, Inc., a Delaware corporation, Jillian's Billiard Cafe of Raleigh, North Carolina, Inc., a Delaware corporation, Jillian's Billiard Club of Charlotte, NC, Inc., a Delaware corporation, Jillian's Billiard Club of Louisville, Kentucky, Inc., a Kentucky corporation, Jillian's Billiard Club of Manchester, NH, Inc., a Delaware corporation, Jillian's Billiard Club of Pasadena, Inc., a California corporation, Jillian's Billiard Club of Seattle, Inc., a Delaware corporation, Jillian's Management Company, Inc., a Delaware corporation, Jillian's of Arundel, MD, Inc., a Delaware corporation, Jillian's of Albany, NY, Inc., a Delaware corporation, Jillian's of Champaign-Urbana, IL, L.P., an Illinois limited partnership, Jillian's Billiard Club of Cleveland Heights Limited Partnership, a Delaware limited partnership, Jillian's of Concord, NC, Inc., a Delaware corporation, Jillian's of Covington, Kentucky, Inc., a Kentucky corporation, Jillian's of Farmingdale, NY, Inc., a Delaware corporation, Jillian's of Franklin, PA, Inc., a Delaware corporation, Jillian's of Gwinnett, GA, Inc., a Delaware corporation, Jillian's of Hollywood, CA, Inc., a Delaware corporation, Jillian's of Houston, TX, Inc., a Delaware corporation, Jillian's of Indianapolis, IN, Inc., a Delaware corporation, Jillian's of Katy, TX, Inc., a Delaware corporation, Jillian's of Minneapolis, MN, Inc., a Delaware corporation, Jillian's of Nashville, TN, Inc., a Delaware corporation, Jillian's Billiard Club of Cleveland, Inc., a Delaware corporation, Jillian's of Norfolk VA, Inc., a Delaware corporation, Jillian's of San Francisco, CA, Inc., a Delaware corporation, Jillian's of Scottsdale, AZ, Inc., a Delaware corporation, Jillian's of Westbury, NY, Inc., a Delaware corporation, Jillian's Billiard Club of Worcester Limited Partnership, a Massachusetts limited partnership, Jillian's of Youngstown, OH, Inc., a Delaware corporation, Jillian's Vending Limited Partnership, a Delaware limited partnership, River Vending, Inc., a Delaware corporation, and Jillian's America Live of Minneapolis, Inc., a Delaware corporation. Buyer Parties (as defined herein) and Sellers are referred to collectively herein as the "*Parties.*"

WHEREAS, each of the applicable Sellers wishes to sell, transfer, convey, assign and deliver to Tango or one of its designated Subsidiaries (collectively, the "*Tango Buyer Group*"), in accordance with Sections 363 and 365 and the other applicable provisions of the Bankruptcy Code, all of the Purchased Assets (as hereinafter defined), together with the Assumed Liabilities (as hereinafter defined), related to the Tango Acquired Stores (as defined herein) of such Sellers upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, each of the applicable Sellers wishes to sell, transfer, convey, assign and deliver to JBC or one of its designated Subsidiaries (collectively, the "*JBC Buyer Group*"), in accordance with Sections 363 and 365 and the other applicable provisions of the Bankruptcy Code, all of the Purchased Assets (as hereinafter defined), together with the Assumed Liabilities (as hereinafter defined), related to the JBC Acquired Stores (as defined herein) of such Sellers upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, each Seller has filed in the United States Bankruptcy Court for the Western District of Kentucky (the "*Bankruptcy Court*") a voluntary petition in bankruptcy under Chapter 11 of the Bankruptcy Code (as hereinafter defined);

WHEREAS, Buyer Parties, on behalf of the JBC Buyer Group and the Tango Buyer Group (collectively, the "*Buyer Group*"), wishes to purchase and take delivery of such Purchased Assets and Assumed Liabilities upon such terms and subject to such conditions;

WHEREAS, the Purchased Assets will be sold pursuant to a Sale Order (as hereinafter defined) of the Bankruptcy Court approving such sale under Section 363 of the Bankruptcy Code and such Sale

Order will include the assumption and assignment of certain executory contracts, unexpired leases and liabilities thereunder under Section 365 of the Bankruptcy Code and the terms and conditions of this Agreement; and

WHEREAS, Tango and D&B desire to, under certain circumstances, assume the obligations of JBC hereunder;

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Parties agree as follows:

1. *Definitions.*

"*Acquired Stores*" means the Tango Acquired Stores and the JBC Acquired Stores.

"*Adjusted Inventory*" has the meaning set forth in Section 2(e)(ii) below.

"*Adjusted Inventory Baseline*" has the meaning set forth in Section 2(e)(ii) below.

"*Adjusted Inventory Statement*" has the meaning set forth in Section 2(e)(ii) below.

"*Adjustment Dispute Notice*" has the meaning set forth in Section 2(e)(ix)(D) below.

"*Affiliate*" means, with regard to any Person, another Person that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the referenced Person. For purposes of the definition of "Affiliate", "control", "controls" or "controlled" means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a Person, whether though the ownership of voting securities, by contract or otherwise.

"*Affiliated Group*" means any affiliated group within the meaning of Code Section 1504(a) or any similar group defined under a similar provision of state, local or foreign law.

"*Agreement*" has the meaning set forth in the preface above.

"*Alternative Arrangement*" has the meaning set forth in Section 5(g) below.

"*Ancillary Agreements*" means each of the Assignment and Assumption Agreement, the Bill of Sale, the Escrow Agreement, the agreements effecting the transfer of the Transferred Intellectual Property, including any exhibits, schedules, attachments, tables or other appendices thereto, and each agreement and other instrument contemplated herein or therein.

"*Arbitrating Accountant*" has the meaning set forth in Section 2(e)(ix)(G) below.

"*Assumed Contracts*" means the agreements and contracts set forth on *Schedule 1.2*, subject to the provisions of Section 2(e)(v).

"*Assumed Liabilities*" means all of (i) liabilities and obligations under the Assumed Contracts in respect of periods after the Closing, except as otherwise provided in Section 2(c), (ii) the liabilities and obligations relating to and arising from the Buyer's operation of the Acquired Stores and the Purchased Assets to be acquired by such Buyer, as applicable, after the Closing, (iii) the liabilities and obligations with respect to Party Deposits and Gift Certificates, (iv) solely with respect to the Tango Buyer Group (A) the liabilities and obligations in respect of periods after the Closing under the Denver Management Agreement, (B) subject to Section 2(e)(v), the liabilities and obligations in respect of periods after the Closing under the Gwinnett Limited Partnership Agreement and the Gwinnett Lease and the Gwinnett Management Agreement, as applicable, (C) the liabilities and obligations in respect of periods after the Closing with respect to that certain letter of credit provided to secure certain obligations under the Lease for the property located at Farmingdale, New York, and (D) liabilities and obligations in respect of periods after the Closing under license agreements substantially similar to the form of the brand license agreement attached hereto as *Exhibit E* for the continuing operations of existing stores other

than the Acquired Stores under the "Jillian's" brand, (v) other liabilities and obligations expressly provided in this Agreement, including Section 5(h) below.

"*Assignment and Assumption Agreement*" means an assignment and assumption agreement, substantially in the form of *Exhibit A* hereto), pursuant to which a Buyer and any of such Buyer's designees shall be assigned and shall assume the performance of the Assumed Contracts for periods after the Closing and the Assumed Liabilities from the respective Sellers, executed by such Buyer or its designee, as applicable.

"*Bankruptcy Code*" means the United States Bankruptcy Code, 11 U.S.C. Section 101, et seq., as amended, or any successor thereto, and any rules and regulations promulgated thereunder.

"*Bankruptcy Court*" has the meaning set forth in the preface above.

"*Bid Procedure Order*" means that certain order of the Bankruptcy Court, dated July 13, 2004, approving, among other things: (i) the scheduling of a public auction for the sale of certain or all of the assets of the Sellers, and (ii) procedures for the submission of qualifying bids.

"*Bill of Sale*" means a general bill of sale and assignment, substantially in the form of *Exhibit B* hereto, with respect to the Purchased Assets, each executed by the appropriate Seller or Sellers.

"*Books and Records*" has the meaning set forth in Section 2(a) below.

"*Buyer*" means each of Tango and JBC.

"*Buyer Group*" means the Tango Buyer Group and/or the JBC Buyer Group.

"*Buyer Party*" means each of Tango, JBC, Gemini and D&B.

"*Cash*" means cash and cash equivalents (including marketable securities and short term investments) as determined in accordance with GAAP.

"*Cash-on-Hand*" means all currency in the possession of a Seller at an Acquired Store, and all currency within a Seller-owned automatic teller machine located on the premises of an Acquired Store, as of the close of business on the day immediately preceding the Closing Date. For purposes of this Agreement with reference to the close of business of any Acquired Store, the expression "day immediately preceding the Closing Date" shall mean the calendar date immediately preceding the calendar date that is the Closing Date notwithstanding that any such Acquired Store's actual close of business may occur after 12:00 a.m. local time.

"*Chapter 11 Case*" means the voluntary cases which were commenced by Sellers under Chapter 11 of the Bankruptcy Code.

"*CIT Equipment*" means all equipment or property acquired by Sellers pursuant to the CIT Note, other than any equipment or property that is currently located at any store that is not an Acquired Store.

"*CIT Note*" means, any and all instruments, agreements, covenants and undertakings whereby Deutsche Financial Services Corporation or any or its affiliates, predecessors, successors or assigns financed the acquisition of equipment or other personal property currently located at one or more of the Acquired Stores including, but not limited to, the following agreements: Agreement by and between Jillian's of Youngstown, Ohio, Inc. and Deutsche Financial Services Corporation, dated March 29, 1999, Agreement by and between Jillian's of Covington, KY, Inc. and Deutsche Financial Services Corporation, dated January 27, 1999, Agreement by and between Jillian's of Indianapolis, IN, Inc. and Deutsche Financial Services Corporation, dated June 9, 1999, Agreement by and between Jillian's of Hollywood, CA, Inc. and Deutsche Financial Services Corporation, dated January 18, 2000.

"*Closing*" has the meaning set forth in Section 2(g) below.

"*Closing Date*" has the meaning set forth in Section 2(g) below.

"*Closing Date Adjustment Statement*" has the meaning set forth in Section 2(e)(ix)(A) below.

"*COBRA*" means Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the Code, and any similar state law.

"*Code*" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"*Confidential Information*" means any information concerning the businesses and affairs of Sellers, their Affiliates and/or the Acquired Stores, other than information that is already generally available to the public or lawfully acquired from a third Person on a non-confidential basis or independently developed by, or on behalf of, Buyer by Persons who do not have access to, or descriptions of, any such information.

"*Denver Management Agreement*" means that certain Entertainment Center Management Agreement, dated June 30, 2002, by and between Jillian's of Denver Mills, LLC, a Delaware limited liability company and Jillian's Management Company, Inc., a Delaware corporation.

"*Deposit*" has the meaning set forth in Section 2(e)(iii) below.

"*Disclosure Schedule*" has the meaning set forth in Section 4 below.

"*Employee Benefit Plan*" means each "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) and each other employee benefit plan, program or arrangement of any kind maintained, sponsored or contributed to by any Seller.

"*Employee Claims*" has the meaning set forth in Section 4(n) below.

"*Environmental, Health, and Safety Requirements*" shall mean all federal, state, local, and foreign statutes, regulations, and ordinances concerning public health and safety, worker health and safety, and pollution or protection of the environment, including all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any hazardous materials, substances, or wastes, as such requirements are enacted and in effect on or prior to the Closing Date.

"*Equipment Leases*" shall mean (i) those leases set forth on *Schedule 1.3* and (ii) all agreements or instruments listed on *Schedule 1.4* which are determined (either by stipulation by the relevant parties or determination by the Bankruptcy Court) to constitute "true leases" pursuant to the provisions of Section 1.203 of the Uniform Commercial Code (and, if any such agreement includes property not located in an Acquired Store, only such portion of the agreement that covers property in the Acquired Stores).

"*ERISA*" shall mean the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"*Escrow Agent*" has the meaning set forth in Section 2(e)(iii) below.

"*Estimated Adjusted Inventory*" has the meaning set forth in Section 2(e)(ii) below.

"*Estimated Closing Date Adjustment Amount*" has the meaning set forth in Section 2(e)(ix)(A) below.

"*Excluded Assets*" has the meaning set forth in Section 2(b) below.

"*Failed Site*" has the meaning set forth in Section 5(g) below.

"*Final Closing Date Adjusted Inventory*" has the meaning set forth in Section 2(e)(ix)(B) below.

"*Final Closing Date Adjustment Statement*" has the meaning set forth in Section 2(e)(ix)(B) below.

"*Final Order*" shall mean an order or judgment, the operation or effect of which is not stayed, and as to which order or judgment (or any revision, modification or amendment thereof), the time to appeal or seek review or rehearing has expired, and as to which no appeal or petition for review or motion for reargument has been taken or been made and is pending for argument.

"*Financial Statements*" has the meaning set forth in Section 4(f) below.

"*Forfeiture Deposit*" has the meaning set forth in Section 2(e)(iii).

"*GAAP*" means United States generally accepted accounting principles as in effect from time to time, consistently applied.

"*GE Equipment*" means all equipment or property acquired by the Sellers pursuant to the GE Note, other than any equipment or property that is currently located at any store that is not an Acquired Store.

"*GE Note*" means any and all instruments, agreements, covenants and undertakings whereby Heller EMX, Inc. or any or its affiliates, predecessors, successors or assigns financed the acquisition of equipment or other personal property currently located at one or more of the Acquired Stores including, but not limited to, the Loan and Security Agreement, dated October 5, 2000 by and between Heller EMX Inc., and certain Jillian's entities named therein.

"*Gift Certificates*" means gift cards or gift certificates that may be redeemed by consumers at the Acquired Stores.

"*Gwinnett Lease*" means that certain Shopping Center Lease between Sugarloaf Mills Limited Partnership, as Landlord, and the Sugarloaf-Gwinnett Partnership, as Tenant, for Discover Mills Shopping Center, dated January 4, 2001, as amended from time to time.

"*Gwinnett Limited Partnership Agreement*" means that certain Limited Partnership Agreement of Sugarloaf Gwinnett Entertainment Company, L.P., dated as of September 26, 2001, by and among Jillian's of Gwinnett and Sugarloaf Mills Residual Limited Partnership.

"*Gwinnett Management Agreement*" means the "Management Agreement," as defined in the Gwinnett Limited Partnership Agreement, entered into by and between Jillian's of Gwinnett and the Sugarloaf-Gwinnett Partnership.

"*Gwinnett Partnership Interest*" means the general partner and limited partner partnership interests held by Jillian's of Gwinnett, pursuant to the Gwinnett Limited Partnership Agreement.

"*HSR Act*" means the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended.

"*IBM Equipment*" means the equipment acquired by Sellers pursuant to the Term Lease Master Agreement, Number 577a1234, dated as of April 19, 2000, by and between IBM Credit Corporation and Jillian's Entertainment Corporation, as supplemented, and any related property acquisition or finance agreements or instruments entered into in connection therewith, other than any equipment or property that is currently located at any store that is not an Acquired Store.

"*Income Tax*" means any federal, state, local or foreign income tax measured by or imposed on net income, including any interest, penalty or addition thereto, whether disputed or not.

"*Income Tax Return*" means any return, declaration, report, claim for refund, or information return or statement relating to income Taxes, including any schedule or attachment thereto.

"*JBC Acquired Stores*" means the stores listed on *Schedule 1.1(b)*.

"*JBC Purchase Price*" has the meaning set forth in Section 2(e) below.

"*JEC*" has the meaning set forth in the preface above.

"*Jillian's Katy*" means Jillian's of Katy, TX, Inc., a Delaware corporation.

"*Jillian's Management*" means Jillian's Management Company, Inc., a Delaware corporation.

"*Jillian's of Gwinnett*" means Jillian's of Gwinnett, GA, Inc. a Delaware corporation.

"*Kenney Agreements*" shall mean (a) the real property lease dated September 15, 1989, as amended or supplemented, by and between Kenney Properties as Landlord and Jillian's Billiard Club of Seattle, Inc., as Tenant, (b) the Construction Agreement dated as of July 2, 1997, by and between Kenney Properties and Jillian's Billiard Club of Seattle, Inc. and (c) the Promissory Note dated as of July 2, 1997, by and between Kenney Properties and Jillian's Billiard Club of Seattle, Inc.

"*Knowledge*" means (i) in the case of Sellers, the actual knowledge of any of Greg Stevens, Dan McDaniel or Kevin Boughey, (ii) in the case of Tango, the actual knowledge of any of David O. Corriveau, James W. Corley, W.C. Hammett, Jr. or Nancy Duricic and (iii) in the case of JBC, the actual knowledge of Daniel M. Smith.

"*Leased Real Property*" means all leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures, or other interest in real property which is used in Sellers' business pursuant to the Leases.

"*Leases*" shall mean all real property leases, including all amendments, modifications, and renewals thereto, for the Acquired Stores, but specifically excluding the Lease Agreement by and between Empire D2 properties LLC and Jillian's Billiards Club of Raleigh, North Carolina, Inc., dated as of October 2001 for parking facilities located at 600 W. Hargett Street, Raleigh, North Carolina.

"*Lenders*" means each of the lenders of Sellers and their Affiliates for borrowed money.

"*Lien*" means any mortgage, pledge, lien, claim (as defined in Section 101 of the Bankruptcy Code), encumbrance, charge or other interest.

"*Limited Partner*" has the meaning set forth in Section 2(e)(v) below.

"*Material Adverse Effect*" or "*Material Adverse Change*" means any effect or change that would be materially adverse to the business of the Acquired Stores, taken as a whole, or on the ability of any Party to consummate timely the transactions contemplated hereby; provided that none of the following shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been a Material Adverse Effect or Material Adverse Change: (a) any adverse change, event, development, or effect arising from or relating to (1) general business or economic conditions, including such conditions related to the restaurant or entertainment industries generally, (2) national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States, except to the extent that any such conditions or acts have a material adverse effect on (x) the physical condition of the Purchased Assets, taken as a whole, or (y) the ability of the Purchased Assets, taken as a whole, to be physically used in a manner consistent with past-practice, (3) financial, banking, or securities markets (including any disruption thereof and any decline in the price of any security or any market index), (4) changes in United States generally accepted accounting principles, (5) changes in law, rules, regulations, orders, or other binding directives issued by any governmental entity and applicable generally to the restaurant and entertainment industries, or (6) the taking of any action contemplated by this Agreement and the other agreements contemplated hereby (including, without limitation, the filing of the Chapter 11 Case), (b) any existing event, occurrence, or circumstance with respect to which the Buyer Parties have Knowledge as of the date hereof, and

(c) any adverse change in or effect on the business of Sellers that is cured by Sellers before the earlier of (1) the Closing Date and (2) the date on which this Agreement is terminated pursuant to Section 9 hereof.

"*Ordinary Course of Business*" means the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency).

"*Outside Closing Date*" means November 20, 2004; *provided*, *however*, that the Outside Closing Date as to any Failed Sites shall be 180 days after the Closing Date.

"*Party*" has the meaning set forth in the preface above.

"*Party Deposits*" means advance deposits made by customers of the Acquired Stores in connection with corporate or other events to be held at the Acquired Stores, which events have not been held prior to the Closing Date.

"*Person*" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity or a governmental entity (or any department, agency, or political subdivision thereof).

"*Purchased Assets*" has the meaning set forth in Section 2(a) below.

"*Purchase Price*" has the meaning set forth in Section 2(e) below.

"*Retained Liabilities*" shall mean all of the liabilities, obligations or indebtedness of any nature whatsoever of Sellers other than the Assumed Liabilities.

"*River Vending*" means River Vending, Inc., a Delaware corporation.

"*Sale Order*" shall mean one or more orders of the Bankruptcy Court, in form and substance reasonably satisfactory to the Buyers and Sellers and consistent with the terms of this Agreement, (i) authorizing the sale of the Purchased Assets to be purchased by each Buyer to such Buyer, free and clear of any and all Liens, (ii) finding that each Buyer is a good faith purchaser of the Purchased Assets under Section 363(m) of the Bankruptcy Code and that the provisions of Section 363(n) of the Bankruptcy Code have not been violated, (iii) approving the assignment to and assumption by each Buyer of the Assumed Contracts to be assumed by such Buyer pursuant hereto and declaring that all Assumed Contracts are valid and binding and in full force and effect, (iv) determining that each Buyer is not a successor to Sellers or otherwise liable for any of the Retained Liabilities or Excluded Assets and permanently enjoining each and every holder of any of the Retained Liabilities or Excluded Assets from commencing, continuing or otherwise pursuing or enforcing any remedy, claim, cause of action or encumbrance against such Buyer or the Purchased Assets related thereto, and (v) approving the consummation of the transactions contemplated herein.

"*Seller*" has the meaning set forth in the preface above.

"*Sellers' Representative*" has the meaning set forth in the preface above.

"*Sony Equipment*" means the equipment leased pursuant to the Sony Lease and currently located at the Acquired Stores.

"*Sony Lease*" means that certain Master Lease Agreement, Number 600205, dated as of February 29, 2000, by and between Sony Financial Services LLC and Jillian's Entertainment Holdings, Inc., and all equipment schedules and other documents executed in connection therewith.

"*Straddle Period*" has the meaning set forth in Section 10(p)(ii)) below.

"*Subsidiary*" means, with respect to any Person, any corporation, limited liability company, partnership, association, or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote

in the election of directors, managers, or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof or (ii) if a limited liability company, partnership, association, or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof and for this purpose, a Person or Persons owns a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons shall be allocated a majority of such business entity's gains or losses or shall be or control any managing director or general partner of such business entity (other than a corporation). The term "*Subsidiary*" shall include all Subsidiaries of such Subsidiary.

"*Sugarloaf-Gwinnett Partnership*" means Sugarloaf Gwinnett Entertainment Company, L.P., a Delaware limited partnership formed pursuant to the Gwinnett Limited Partnership Agreement.

"*Tango Acquired Stores* "means the stores listed on *Schedule 1.1(a)*.

"*Tango Purchase Price*" has the meaning set forth in Section 2(e) below.

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

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

"*Transferred Employees*" has the meaning set forth in Section 5(h)(ii) below.

"*Transferred Intellectual Property*" means all of Seller's right, title and interest in and to any and all (a) registered (whether in the U.S., Canada or elsewhere) and unregistered trademarks, patents, copyrights, service marks, trade dress, logos, trade names (including the "Jillian's" trade name) and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, (b) store level trade secrets, recipes, research and development, know-how, processes, methods, techniques, data, designs, drawings, specifications, manuals, and business, technical and marketing plans and proposals, and (c) domain names, web addresses and websites using the "Jillian's" name, in each case to the extent used in the operation of the Acquired Stores.

"*Transition Period*" has the meaning set forth in Section 6(b) below.

"*WARN Act*" shall mean collectively the Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101, et seq. and the regulations promulgated thereunder, and any similar foreign, state or local statutes.

2. *Purchase and Sale of the Assets; Assumption of Liabilities.*

(a) *Purchased Assets.*

(i) On the terms and subject to the conditions set forth herein, and except as otherwise provided in this Section 2, at the Closing, the applicable Sellers shall sell, transfer, assign, convey and deliver to the applicable members of the Tango Buyer Group or the applicable members of the JBC Buyer Group, as appropriate, and the applicable members of the Tango Buyer Group or the applicable members of the JBC Buyer Group, as appropriate, agree to purchase and accept from the applicable Sellers, free and clear from all Liens, all of the

applicable Sellers' right, title and interest in and to all of the assets and properties specified below.

(A) All furniture, games, equipment and other similar items of tangible personal property located in the Acquired Stores or used in the business of the Acquired Stores (other than any tangible personal property that is currently located at any store that is not an Acquired Store), including, without limitation, all of the IBM Equipment, the CIT Equipment and the GE Equipment, and any equipment acquired pursuant to, or financed under, the agreements or instruments on *Schedule 1.4* that are not determined (either by stipulation by the relevant parties or determination by the Bankruptcy Court) to constitute "true leases" pursuant to the provisions of Section 1.203 of the Uniform Commercial Code.

(B) All supplies, tableware, glassware, small wares, menus, uniforms and items of inventory located in the Acquired Stores or used in the business of the Acquired Stores.

(C) All leasehold interests in the Acquired Stores, in each case together with Sellers' interests in all buildings, fixtures, plant, equipment and improvements thereon or attached thereto, all rights-of-way, privileges and appurtenances associated therewith and any related security deposits.

(D) All Assumed Contracts.

(E) Except as provided in Section 2(b)(iv) below, all of Sellers' rights, claims, rights of offset or causes of action against third parties with respect to the Purchased Assets and Assumed Liabilities that arise in the Ordinary Course of Business or relate to the operation of the business of the Acquired Stores.

(F) All deposits (other than the Deposit) and prepaid expenses of the business of the Acquired Stores.

(G) All books and records (including all data and other information stored on discs, tapes or other media and customer, prospect and other mail lists, supplier and vendor lists, pricing and cost information) of the business of the Acquired Stores, wherever located (the "*Books and Records*").

(H) All phone numbers and listings for the Acquired Stores.

(I) To the extent transferable, all licenses, permits or other grants granted by governmental authorities used in or required or necessary for the lawful ownership and operation of the Acquired Stores.

(J) To the extent transferable under applicable law, any automatic teller machine located at any Acquired Store and the currency in such machines as of the close of business on the day immediately preceding the Closing Date.

(K) Cash on Hand.

(L) All other assets owned or used by Sellers that are located at the Acquired Stores or used in the business of the Acquired Stores (other than any assets that are currently located at any store that is not an Acquired Store).

(M) Solely to the Tango Buyer Group, all of the Transferred Intellectual Property, including, without limitation, the Transferred Intellectual Property set forth on *Schedule 2(a)(i)(M)*.

(ii) (Notwithstanding Section 2(a) above, on the terms and subject to the conditions set forth herein, at the Closing, Jillian's Management shall only sell, transfer, assign, convey and deliver to the applicable members of the Tango Buyer Group, and the applicable members of the Tango Buyer Group shall purchase and accept from Jillian's Management, free and clear from all Liens, all of Jillian's Management's right, title and interest in and to the Denver Management Agreement.

(iii) Notwithstanding Section 2(a) above, on the terms and subject to the conditions set forth herein, at the Closing, River Vending shall only sell, transfer, assign, convey and deliver to applicable members of the Tango Buyer Group or JBC Buyer Group, as appropriate, and applicable members of the Tango Buyer Group or JBC Buyer Group, as appropriate, shall purchase and accept from River Vending, free and clear from all Liens, all of River Vending's right, title and interest in and to the assets and properties set forth on *Schedule 2(a)(iii)* which are located at the Acquired Stores.

(iv) Notwithstanding Section 2(a) above, on the terms and subject to the conditions set forth herein, at the Closing, Jillian's Katy shall only sell, transfer, assign, convey and deliver to the applicable members of the Tango Buyer Group and the applicable members of the Tango Buyer Group shall purchase and accept from Jillian's Katy, free and clear from all Liens, all of Jillian's Katy's right, title and interest in and to all of the assets enumerated above in Sections 2(a)(i)(A), (B) and (D) through (M). For purposes of clarification, the Parties acknowledge and agree that any and all leasehold interests in respect of Jillian's Katy are not Purchased Assets and are, therefore, Excluded Assets.

(v) Subject to Section 2(e)(v), on the terms and subject to the conditions set forth herein and to the extent transferable (and without Seller's making any representations or warranties as to the transferability of such interest) Jillian's of Gwinnett shall sell, assign, convey and deliver to the applicable members of the Tango Buyer Group and the applicable members of the Tango Buyer Group shall purchase and accept all of Jillian's of Gwinnett's right, title and interest to the Gwinnett Partnership Interest and, as applicable, the Gwinnett Lease and the Gwinnett Management Agreement.

(vi) On the terms and subject to the conditions set forth herein, at the Closing, JEC and/or the appropriate Sellers shall sell, transfer, assign, convey and deliver to the applicable members of the JBC Buyer Group and the applicable members of the JBC Buyer Group shall purchase and accept from JEC and/or the appropriate Sellers, free and clear from all Liens, all of JEC's and/or such appropriate Sellers' right, title and interest in and to the assets and properties set forth on *Schedule 2(a)(vi)* and any other assets located at Sellers' corporate headquarters in Louisville, Kentucky that are necessary for JBC's operation of the Acquired Stores as conducted by Sellers. For purposes of clarification, the Parties acknowledge and agree that any and all leasehold interests in respect of the corporate headquarters in Louisville, Kentucky are not a Purchased Asset and are Excluded Assets.

(vii) Notwithstanding anything herein to the contrary, all equipment and/or inventory underlying the Equipment Leases shall be delivered to the Buyer Parties subject to the

Equipment Leases, and, for the purposes of clarity, such equipment shall not be delivered free and clear of Liens arising from the Equipment Leases.

The assets and properties set forth in this Section 2(a) are hereinafter collectively referred to as the "*Purchased Assets*." With respect to the assets enumerated above in Sections 2(a)(i)(A) through (L), Section 2(a)(iii) and Section 2(a)(vii), to the extent such assets are located, or used in the business of or are related to (X) the Tango Acquired Stores, such assets, in accordance with Section 2(a)(i), shall be sold, transferred, assigned, conveyed and delivered to the applicable members of the Tango Buyer Group or (Y) the JBC Acquired Stores, such assets, in accordance with Section 2(a)(i), shall be sold, transferred, assigned, conveyed and delivered to the applicable members of the JBC Buyer Group.

(b) *Excluded Assets*. Other than the Purchased Assets, all of the assets and properties of Sellers shall be retained by Sellers and are not being sold or transferred to the Buyer Parties hereunder (herein referred to as the "*Excluded Assets*"). Without limiting the generality of the foregoing, Excluded Assets shall include, without limitation, the following assets and properties specified below:

(i) All Cash other than Cash-on-Hand.

(ii) All notes, trade and other accounts receivable, including accounts receivable from Affiliates of any Seller.

(iii) All intellectual property rights of Sellers other than the Transferred Intellectual Property.

(iv) All of Sellers' rights, claims, rights of offset or causes of action if any, arising hereunder against the Buyer Parties and their Affiliates if any, and all of Sellers' rights, claims, rights of offset or causes of action against third parties arising under and relating to Chapter 5 of the Bankruptcy Code.

(v) All corporate minute books and stock transfer books and the corporate seal of any of Sellers.

(vi) Subject to Section 2(e)(v), all shares of capital stock, partnership interests, membership interests or other ownership interests of each of Sellers, and all equity securities owned or held by any of Sellers.

(vii) All contracts other than the Assumed Contracts.

(viii) All insurance policies.

(ix) All Employee Benefit Plans and any trusts, insurance contracts or administrative service agreements pertaining thereto, and all employment agreements.

(x) To the extent non-transferable by law, any such liquor licenses and permits.

(xi) Subject to Section 2(e)(iv), the Sony Equipment. In no circumstances shall the rejection of the Sony Lease be considered a Material Adverse Change.

(xii) Any assets owned by Jillian's Memphis.

(xiii) Any assets of Jillian's Management, River Vending or Jillian's Katy other than those expressly referenced in subsections 2(a)(ii), (iii) and (iv).

(c) *Assumption and Assignment.*

(i) Sellers agree to assign the Assumed Contracts to the applicable members of the Tango Buyer Group or the JBC Buyer Group (in accordance with the last paragraph of Section 2(a)), as provided in this Section 2(c) and the Final Order;

(ii) Sellers agree to cure all defaults under the Assumed Contracts prior to the Closing, including, without limitation, payment of any applicable cure amounts, to the extent required pursuant to an order of the Bankruptcy Court to effectuate the valid assignment of the Assumed Contracts;

(iii) Sellers shall use commercially reasonable efforts to obtain a stipulation by the relevant parties or a determination by the Bankruptcy Court that the agreements or instruments set forth on Schedule 1.4 are financing transactions. In the event a dispute exists as of the Closing between the Sellers and any party to one or more of the agreements or instruments listed on *Schedule 1.4* as to whether such agreement(s) constitutes a "true lease" (requiring cure of defaults and assumption and assignment) or a financing transaction, Sellers agree to obtain a Sale Order providing that the applicable members of the Tango Buyer Group or the JBC Buyer Group (in accordance with the last paragraph of Section 2(a)) receive either transfer of title to the assets described in the agreement(s) or instrument(s) listed on *Schedule 1.4* subject to such dispute, free and clear of all Liens pursuant to Section 363 of the Bankruptcy Code or, alternatively, an assignment of such agreement(s) pursuant to Section 365 of the Bankruptcy Code, upon final determination by a court of competent jurisdiction (and pending such determination, Buyer shall be entitled to possession and control of the property subject to such dispute).

(iv) At the Closing, the applicable members of the Tango Buyer Group or the JBC Buyer Group, as appropriate, shall assume and thereafter in due course pay, fully satisfy, discharge and perform the Assumed Liabilities, including all of the obligations under the Assumed Contracts pursuant to Section 365 of the Bankruptcy Code, *provided that*, to the extent any agreements or instruments listed on *Schedule 1.4* are determined to be "true leases" pursuant to the provisions of Section 1.203 of the Uniform Commercial Code (either by stipulation by the relevant parties or determination by the Bankruptcy Court), the Buyer Group shall assume all monetary obligations to third parties under such agreements and instruments up to $150,000 (such limitations of $150,000 to be allocated between the Tango Buyer Group and the JBC Buyer Group as mutually agreed by those groups). With respect to the Assumed Liabilities, to the extent such Assumed Liabilities are related to (X) the Tango Acquired Stores, such Assumed Liabilities shall be assumed, paid, satisfied, discharged and performed by the applicable members of the Tango Buyer Group or (Y) the JBC Acquired Stores, such Assumed Liabilities shall be assumed, paid, satisfied, discharged and performed by the applicable members of the JBC Buyer Group.

(d) *Retained Liabilities*. The Buyer Group shall not assume or agree to pay, satisfy, discharge or perform, or take or agree to take any of the Purchased Assets subject to, and shall not be deemed by virtue of the execution, delivery and performance of this Agreement or any document delivered to the Sellers or Buyer Group at the Closing pursuant hereto, or as a result of the consummation of the transactions contemplated hereby, to have assumed, or to have agreed to assume, pay, satisfy, discharge or perform, or take, or to have agreed to take, any of the Retained Liabilities.

(e) *Consideration.*

(i) *Purchase Price*. Subject to adjustment in accordance with this Section 2(e), (A) the aggregate purchase price for the Purchased Assets to be acquired by the applicable members

of the Tango Buyer Group (the "*Tango Purchase Price*") is equal to Forty-Five Million Eight Hundred Ninety-Five Thousand Eight Hundred Fifty United States Dollars (US $45,895,850) and (B) the aggregate purchase price for the Purchased Assets to be purchased by the applicable members of the JBC Buyer Group (the "*JBC Purchase Price*" and together with the Tango Purchase Price, the "*Purchase Price*") is equal to Eighteen Million Two Hundred Ninety-Four Thousand One Hundred Fifty United States Dollars (US $18,294,150). To the extent the Purchase Price is adjusted in accordance with this Section 2(e), subject to Section 2(e)(vii) and Section 2(e)(viii), the amount of any Purchase Price adjustment shall be allocated between the Tango Buyer Group and the JBC Buyer Group based on the pro rata portion of the Purchase Price payable by such groups in accordance with this Section 2(e)(i) unless the JBC Buyer Group and Tango Buyer Group mutually agree to a different allocation.

(ii) *Adjusted Inventory Adjustment*. The Purchase Price at the Closing shall be:

(A) increased by the amount, if any, by which the aggregate Estimated Adjusted Inventory (as defined and determined pursuant to this Section 2(e)(ii) and as set forth on *Schedule 2(e)(ii)*), exceeds $1,161,000 (the "*Adjusted Inventory Baseline*"); or

(B) reduced by the amount, if any, by which the aggregate Estimated Adjusted Inventory is less than the Adjusted Inventory Baseline.

For the purposes of this Agreement, "*Adjusted Inventory*" means the total of the following items: (i) food, (ii) beverages, (iii) beer, (iv) wine, (v) liquor, (vi) retail clothing, (vii) retail-other/redemption inventory, (viii) cigarettes, and (ix) cigars, in each case as (1) calculated in accordance with GAAP applied in a manner consistent with the preparation of the Financial Statements and (2) consistent with the preparation of the Adjusted Inventory Statement attached hereto as *Schedule 2(e*). No later than five (5) business days before the Closing Date, Sellers shall deliver to Buyer a written statement, which shall be based on a physical inventory by Sellers, prepared in good faith and subject to Buyer's reasonable approval (the "*Adjusted Inventory Statement*") setting forth Sellers' reasonable estimation of the dollar amount of Adjusted Inventory of the Sellers referenced on *Schedule 2(e)* as of the close of business on the day immediately preceding the Closing Date (the "*Estimated Adjusted Inventory*").

(iii) *Deposit*. Each of Tango and JBC has previously entered into an escrow agreement with Sellers and Union Bank of California, N.A. dated as of May 23, 2004. Notwithstanding anything in such escrow agreement to the contrary, the Parties agree to cause the amounts thereunder (the "*Initial Earnest Money Deposits*") to be transferred and deposited into the escrow account of Frost Brown Todd LLC (the "*Escrow Agent*") within two business days from the date hereof. An additional earnest money deposit (such additional deposit, with the Initial Earnest Money Deposits, the "Deposit") in the amount of $1,421,000 shall be paid by Tango into an escrow account of the Escrow Agent within two business days of the date hereof. Such Deposit shall be held in accordance with the terms of the Bid Procedures Order and in accordance with the terms of that certain Escrow Agreement dated September 23, 2004 by and among Buyers, Sellers' Representative and the Escrow Agent. The Deposit shall be applied to the Purchase Price payable by Buyers (in accordance with the respective amounts deposited by each Buyer Group) on the Closing Date; *provided*, *that*, in the event the Tango Buyer Group purchases the JBC Acquired Stores (as well as the Tango Acquired Stores), as provided in this Agreement, then the full amount of the Deposit, including any amounts deposited on behalf of the JBC Buyer Group, will be applied to the purchase price to be paid by the Tango Buyer Group. If the Closing shall not have occurred on or before November 20, 2004 by reason of a breach by either of the Buyers of any material representation, warranty, or covenant contained in this Agreement in any material respect, which breach has continued without cure for a period of ten (10) days after Seller's notice of breach, and Sellers terminate

this Agreement pursuant to Section 9(a)(v)(A), then the Escrow Agent shall pay from the Deposit an amount equal to $2,800,000 (the "*Forfeiture Deposit*") to Sellers in accordance with the terms of the Bid Procedure Order (it being understood that (i) if JBC is the Buyer in breach, the remainder of the Deposit shall be returned to Tango, and (ii) if Tango is the Buyer in breach, the remainder of the Deposit shall be returned to JBC). If this Agreement is terminated for any other reason, or in the event that a Person other than the Buyer Parties purchases all or any portion of the Purchased Assets, then the Escrow Agent shall return the Deposit to the respective Buyers in accordance with the terms of the Bid Procedure Order.

(iv) In accordance with Section 2(b)(xi), the Sony Equipment is an Excluded Asset. Notwithstanding the foregoing, the Sellers covenant and agree to use commercially reasonable efforts to deliver such Sony Equipment in the Acquired Stores to the applicable Buyer Party as part of the Purchased Assets. If Sellers are able to effect the delivery of the Sony Equipment as part of the Purchased Assets prior to the Closing, and are able to do so in accordance with the representations, warranties and other provisions of this Agreement, free and clear of all Liens, including any purchase money liens and other liens or encumbrances securing rental payments under any lease, then, the Purchase Price at the Closing shall be increased by $120,000, and such Sony Equipment shall be included as part of Purchased Assets.

(v) The Gwinnett Partnership Interest will be included as a Purchased Asset, in accordance with Section 2(a)(v), *provided that* first Tango and/or one of its designees and Sugarloaf Mills Residual Limited Partnership (the "*Limited Partner*") enter into a written agreement in connection with the proposed transfer of the Gwinnett Partnership Interest from Jillian's of Gwinnett to Tango, which agreement is satisfactory to Tango and includes (A) any consents or approvals of the Limited Partner, its Affiliates or others, as appropriate, to such transfer as may be required under the Gwinnett Limited Partnership Agreement, the Gwinnett Management Agreement, the Gwinnett Lease or otherwise and (B) an acknowledgement by the Limited Partner that it and its Affiliates are owed no more than $2,700,000 from Tango, any of their Affiliates or Sugarloaf-Gwinnett Partnership in connection with the Gwinnett Limited Partnership Agreement, the Gwinnett Lease, the Gwinnett Management Agreement, or any other related agreement, including without limitation all payments due under Article 6 of the Gwinnett Limited Partnership Agreement, but excluding amounts accruing under those agreements in respect of periods following the Closing. If Tango or one of its designees and the Limited Partner do not enter into such an agreement within 60 days following the Closing Date, then the Tango Purchase Price shall be reduced by $1,000,000, and the Gwinnett Partnership Interest shall be excluded from the Purchased Assets and the Gwinnett Limited Partnership Agreement, the Gwinnett Management Agreement and the Gwinnett Lease will be excluded from the list of Assume Contracts.

(vi) *Party Deposits*. The Purchase Price at the Closing shall be decreased by the amount of the Party Deposits in excess of $650,000.

(vii) *Cash on Hand*. The Purchase Price payable by the applicable Buyer at the Closing shall be increased by the dollar amount of Cash on Hand at the applicable Acquired Stores, the assets of which are being purchased hereunder.

(viii) *Purchase Price Adjustment; Real Estate Expenses and Taxes.*

(A) On or prior to the day immediately preceding the Closing Date, Sellers shall deliver to Buyers a written statement (the "*Closing Date Adjustment Statement*") setting forth Sellers' reasonable estimation of the amount, as of the Closing Date, of all prepayments made by Sellers for periods following the Closing and all accrued obligations of any Sellers for periods prior to the Closing, in each case with respect to base rent,

percentage rent or other monthly rent payments, real property taxes and personal property taxes that are to be paid by Sellers in accordance with the real property leases for the Acquired Stores and allocated among the appropriate Acquired Stores (the "*Adjustment Expenses*"). Sellers shall offset any prepayments, which are included in the Adjustment Expenses, against any accrued obligations that remain unpaid, which are also included in the Adjustment Expenses, and the resulting dollar amount shall be referred to herein as the "*Estimated Closing Date Adjustment Amount*". At the Closing, the Purchase Price payable by the applicable Buyer shall be increased by the Estimated Closing Date Adjustment Amount if the estimated amount of prepayments exceeds the accrued obligations, or the Purchase Price payable by the applicable Buyer shall be decreased if the amount of accrued obligations exceeds the prepayments made with respect to the Acquired Stores the assets of which are being purchased by such Buyer hereunder.

(B) Following the Closing, Sellers shall prepare a statement (the "*Final Closing Date Adjustment Statement*") setting forth the actual amount, as of the Closing Date, of the Adjustment Expenses, the total of which shall be referred to herein as the "*Final Closing Date Adjustment Amount*". Sellers shall use commercially reasonable efforts to cause the Final Closing Date Adjustment Statement to be delivered to Buyer within thirty (30) days following the Closing Date, but in no event will the Final Closing Date Adjustment Statement be delivered any later than forty-five (45) days following the Closing Date. The Purchase Price, as adjusted pursuant to subsection (A) hereof, shall be appropriately adjusted to reflect any difference in the amount, if any, by which the Estimated Closing Date Adjustment Amount is more or less than the Final Closing Date Adjustment Amount.

(C) Sellers shall make available to Buyers, without cost or expense to Buyers, the books and records of Sellers (and its accountants regarding the business) and personnel of Sellers which Buyers and their accountants reasonably require and take such other action reasonably necessary in order to allow Buyer to review and confirm the accuracy of the Final Closing Date Adjustment Statement as applicable to the appropriate Buyer.

(D) The Final Closing Date Adjustment Statement, as prepared by Sellers, shall be conclusive and binding upon the Parties hereto unless the applicable Buyer shall deliver written notice of a dispute stating that the Final Closing Date Adjustment Statement is not prepared in accordance with the requirements of this Section 2 or is otherwise incorrect (an "*Adjustment Dispute Notice*"), such Adjustment Dispute Notice to be delivered to Sellers within fifteen (15) days following receipt by such applicable Buyer of the Final Closing Date Adjustment Statement. The Adjustment Dispute Notice shall set forth, in reasonable detail, the items and amounts with which by the applicable Buyer disagrees, and Sellers and the applicable Buyer shall, within fifteen (15) days following receipt by Sellers of such Adjustment Dispute Notice, attempt to resolve such dispute and agree in writing upon the final content of the Final Closing Date Adjustment Statement.

(E) If the applicable Buyer does not dispute the accuracy of the Final Closing Date Adjustment Statement, then the Purchase Price shall be adjusted appropriately and Sellers or the appropriate Buyer, as applicable, shall remit payment to the other to reflect any decrease or increase in the Purchase Price, as a result of such adjustment, in immediately available funds within fifteen (15) days of the date on which the Final Closing Date Adjustment Statement is made final.

(F) If the applicable Buyer delivers an Adjustment Dispute Notice to Sellers pursuant to Section 2(e)(ix)(D) hereof, and Buyers and Sellers resolve such dispute and

agree in writing upon the final content of the Final Closing Date Adjustment Statement, Sellers or such the applicable Buyer that delivered the Adjustment Dispute Notice shall remit the Final Closing Date Adjustment Amount to the other in immediately available funds within five (5) days of the agreement by applicable Buyer and Sellers regarding the final content of the Final Closing Date Adjustment Statement.

(G) If Sellers and the applicable Buyer are unable to resolve any such dispute within the fifteen (15) day period following receipt by Sellers of such Adjustment Dispute Notice, a nationally recognized independent accounting firm mutually acceptable to the Parties (the "*Arbitrating Accountant*") shall, within five (5) business days following such fifteen (15) day period, be engaged as arbitrator hereunder to settle such dispute within thirty (30) days following the engagement of the Arbitrating Accountant. The Parties hereby acknowledge and agree to waive any conflicts of interest or otherwise in connection with engaging such Arbitrating Accountant. In connection with the resolution of any such dispute, the Arbitrating Accountant shall have access to all documents, records, work papers, facilities and personnel necessary to perform its function as arbitrator (and each Party shall be given access to any such documents). None of the Parties shall be permitted to conduct or take any discovery (other than the access to documents referred to in the preceding sentence), testimony, depositions, cross-examinations or otherwise of the other Parties. The Arbitrating Accountant's function shall be to review only those items set forth on the Final Closing Date Adjustment Statement which are in dispute and to resolve the dispute with respect to such items. The Arbitrating Accountant's determination with respect to any such dispute shall be final and binding upon the Parties hereto, and judgment may be entered on the determination. The fees and expenses of the Arbitrating Accountant shall be borne equally by Sellers and the applicable Buyer. Upon the resolution of such dispute, (1) the Final Closing Date Adjustment Statement shall be revised to reflect such resolution, (2) any adjustment to the Final Closing Date Adjustment Statement, the Purchase Price and the payment for the adjusted Final Closing Date Adjustment Amount shall be made within five (5) days following the resolution of such dispute in accordance with this Section 2(e)(ix), and (3) concurrent with the resolution of such dispute and the making of the required payments, if any, Sellers and the applicable Buyer shall execute a mutual release, in form and substance satisfactory to such Parties, relating only to the resolution of the dispute regarding the Final Closing Date Adjustment Statement.

(f) *Tax Allocation of Purchase Price*. At or prior to the Closing, Buyers and Sellers shall enter into an agreement reasonably allocating the Purchase Price among the Purchased Assets in accordance with Section 1060 of the Code and the applicable Treasury Regulations thereunder, including Treasury Regulation 1.1060-1. Buyers and Sellers shall report and file all of their respective Tax Returns (including amended Tax Returns and claims for refund) consistent with such allocation, and shall take no position contrary thereto or inconsistent therewith (including, without limitation, in any audits or examinations by any taxing authority or in any other proceedings). Buyers and Sellers shall cooperate in the filing of any forms (including Forms 8594) with respect to such allocation. Notwithstanding any other provisions of this Agreement, the foregoing agreement shall survive the Closing Date without limitation and shall bind the Parties thereto for U.S. federal, state and local income tax purposes only and for no other purpose.

(g) *Closing*. The closing of the transactions contemplated by this Agreement (the "*Closing*") shall take place at the Dallas offices of Hallett & Perrin, P.C., commencing at 9:00 a.m. local time on the Monday following the satisfaction or waiver of all conditions to the obligations of the Parties to consummate the transactions contemplated hereby (other than conditions with respect to actions the respective Parties will take at the Closing itself) or such other date as Buyer and Seller

may mutually determine (the "*Closing Date*"). The Parties shall use their commercially reasonable efforts to consummate the transactions contemplated hereby within twenty-five (25) calendar days after the date that the Bankruptcy Court has entered the Sale Order approving such sale to Buyer.

(h) *Deliveries at Closing*. At the Closing, (i) Seller shall deliver to Buyers the various certificates, instruments, and documents referred to in Section 7(c)(i)) below, and (ii) Buyers will deliver to Seller the various certificates, instruments, and documents referred to in Section 7(c)(ii) below.

3. *Buyer Parties' Representations and Warranties*. JBC Buyer Parties and the Tango Buyer Parties, severally, represent and warrant to Sellers that the statements contained in this Section 3 are true, correct and complete as of the date of this Agreement with respect to each Buyer Party and will be correct and complete as of the Closing Date with respect to each Buyer Party (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Section 3).

(a) *Organization of Buyer Party*. Each Buyer Party is a corporation (or other entity) duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation (or other formation).

(b) *Authorization of Transaction*. Each Buyer Party has full power and authority (including full corporate or other entity power and authority) to execute and deliver this Agreement and each of the Ancillary Agreements to which it is a party and to perform its obligations hereunder and thereunder. This Agreement and each of the Ancillary Agreements to which it is a party constitutes the valid and legally binding obligation of such Buyer Party, enforceable against such Buyer Party in accordance with its terms and conditions, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditor's rights and except to the extent that the availability of specific performance, injunctive relief or other equitable remedies is subject to the discretion of the court before which any proceeding thereof may be brought. No Buyer Party needs to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to consummate the transactions contemplated by this Agreement other than those required under applicable bankruptcy law, the rules and orders of the Bankruptcy Court. The execution, delivery and performance of this Agreement, each of the Ancillary Agreements and all other agreements contemplated hereby to which such Buyer Party is a party have been duly authorized by such Buyer Party.

(c) *Noncontravention*. Neither the execution and the delivery of this Agreement or any of the Ancillary Agreements, nor the consummation of the transactions contemplated hereby, will (A) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which such Buyer Party is subject, *provided that* the Bankruptcy Court approves the transactions contemplated by this Agreement and enters the Sale Order, or any provision of its charter, bylaws, or other governing documents or (B) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which the Buyer Party is a party or by which it is bound or to which any of its assets is subject.

(d) *Brokers' Fees*. No Buyer Party has any liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement, except Tango's obligation to US Bancorp Piper Jaffray.

(e) *Financing.*

(i) Buyers have sufficient cash, available lines of credit or other sources of immediately available funds to enable the Buyer Parties to purchase the Purchased Assets and pay any other amounts to be paid by it hereunder.

(ii) JBC has sufficient cash, available lines of credit or other sources of immediately available funds to enable the JBC Buyer Group to purchase the Purchased Assets related to the JBC Acquired Stores and pay any other amounts to be paid by it hereunder.

(iii) Tango has sufficient cash, available lines of credit or other sources of immediately available funds to enable Tango to purchase all the Purchased Assets and pay any other amounts to be paid by it hereunder.

(f) *Assumed Contracts*. Each member of the Buyer Group is and will be capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f)(2) of the Bankruptcy Code with respect to the Assumed Contracts to be assumed by such member of the Buyer Group.

4. *Sellers' Representations and Warranties*. Each Seller represents and warrants to Buyers that the statements contained in this Section 4 are true, correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Section 4) (in each case as such statements relate to the Acquired Stores that the applicable Buyer is purchasing hereunder), except as set forth in the disclosure schedule delivered by Sellers to Buyer on the date hereof and attached to this Agreement as *Exhibit C* (the "*Disclosure Schedule*").

(a) *Organization, Qualification, and Corporate Power*. Each Seller is a corporation or limited partnership duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or formation. Each Seller is duly authorized to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required, except where the lack of such qualification would not have a Material Adverse Effect. Each Seller has full corporate power and authority to carry on the businesses in which it is engaged and to own and use the properties owned and used by it.

(b) *Authorization of Transaction*. Each Seller has full power and authority (including full corporate or other entity power and authority) to execute and deliver this Agreement and each of the Ancillary Agreements and, subject to the approval of the Bankruptcy Court, to perform its obligations hereunder. This Agreement and each of the Ancillary Agreements constitutes the valid and legally binding obligation of each Seller, enforceable in accordance with its terms and conditions, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditor's rights and except to the extent that the availability of specific performance, injunctive relief or other equitable remedies is subject to the discretion of the court before which any proceeding thereof may be brought. The execution, delivery and performance of this Agreement, each of the Ancillary Agreements, and all other agreements contemplated hereby have been duly authorized by each Seller.

(c) *Noncontravention*. To Sellers' Knowledge, neither the execution and the delivery of this Agreement or any of the Ancillary Agreements, nor the consummation of the transactions contemplated hereby, will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which any Seller is subject, *provided that* the Bankruptcy Court approves the transactions contemplated by this Agreement and enters the Sale Order, or any provision of the charter, bylaws, partnership agreement or other governing document of any Seller or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any

party the right to accelerate, terminate, modify, or cancel, or require any notice under any Assumed Contract, except for consent of the Bankruptcy Court or where the violation, conflict, breach, default, acceleration, termination, modification, cancellation, or failure to give notice would not have a Material Adverse Effect. To the Knowledge of Seller and other than pursuant to the HSR Act, no Seller needs to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order for the Parties to consummate the transactions contemplated by this Agreement, except for any notice, filing, authorization, consent or approval of the Bankruptcy Court or where the failure to give notice, to file, or to obtain any authorization, consent, or approval would not have a Material Adverse Effect.

(d) *Brokers' Fees*. None of Sellers has any liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement, except Houlihan, Lokey, Howard & Zukin.

(e) *Title to and Condition of Assets.*

(i) *Schedule 1.3* and *Schedule 1.4* contain a full and complete list of all material financing agreements and instruments covering personal property included within the definition of Purchased Assets;

(ii) Sellers have good and marketable title to the Purchased Assets other than personal property described in the agreements listed on *Schedule 1.3* and *Schedule 1.4* that are determined (either by stipulation of the Sellers or Bankruptcy Court determination) to constitute "true leases";

(iii) Sellers have a valid leasehold interest in the personal property described in the agreements that are determined to constitute "true leases" (either by stipulation of the Sellers or Bankruptcy Court determination);

(iv) All of the tangible Purchased Assets are in the possession and control of Sellers and located at the appropriate Acquired Store or Sellers' Louisville, Kentucky corporate headquarters as appropriate. The Purchased Assets, considered as a whole and not on an asset by asset basis, are in good working order, ordinary wear and tear excepted, and are free from material defects known to Sellers;

(f) *Financial Statements*. Attached as Section 4(f) of the Disclosure Schedule are (i) the audited consolidated balance sheet and statement of income of Jillian's Entertainment Holdings, Inc. and its consolidated Subsidiaries as of and for the years ended March 30, 2003 and March 31, 2002, and (ii) unaudited statements of income for each Seller as of and for the fiscal year ended March 30, 2004 and for the period ended June 27, 2004 (together, the "*Financial Statements*"). The Financial Statements have been prepared in accordance with GAAP on a consistent basis throughout the periods covered thereby, and present fairly in all material respects the financial condition and results of operations of each Seller and Jillian's Entertainment Holdings, Inc. and its consolidated Subsidiaries, as applicable, as of such dates and the results of operations of each Seller for such periods.

(g) *Events Subsequent to Most Recent Fiscal Month End*. Since June 27, 2004, there has not been any Material Adverse Change. Without limiting the generality of the foregoing, since that date none of Sellers has engaged in any practice, taken any action, or entered into any transaction outside the Ordinary Course of Business.

(h) *Legal Compliance*. To Sellers' Knowledge, each Seller has complied in all material respects with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder) of federal, state, local, and foreign governments (and all agencies thereof). To Sellers' Knowledge, each Seller holds all permits which are required

to conduct the business of the Acquired Stores as currently conducted, (i) all such permits are in full force and effect and (ii) no proceeding is pending to revoke or limit any of such permits.

(i) *Tax Matters*. In each case, to the Knowledge of Sellers:

(i) Each Seller has filed all Income Tax Returns that it was required to file, and has paid all Income Taxes shown thereon as owing, except where the failure to file Income Tax Returns or to pay Income Taxes would not have a Material Adverse Effect.

(ii) Section 4(i) of the Disclosure Schedule lists all Income Tax Returns filed with respect to each Seller for taxable periods ended on or after March 31, 2000, indicates those Income Tax Returns that have been audited, and indicates those Income Tax Returns that currently are the subject of audit.

(iii) No Seller has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(j) *Real Property.*

(i) None of Sellers owns any real property in respect of the operation of the Acquired Stores.

(ii) Section 4(j) of the Disclosure Schedule sets forth the address of each parcel of Leased Real Property, and a true and complete list of all Leases for each such parcel of Leased Real Property. Sellers have made available to Buyers a true and complete copy of each such Lease document, including all amendments, renewals and modifications thereof, and all correspondence material to the performance of the Lease.

(iii) Except as set forth in Section 4(j) of the Disclosure Schedule, with respect to each of the Leases: (a) such Lease is a legal, valid, binding and enforceable obligation of the Seller that is a party thereto, and to Sellers' Knowledge, such Lease is a legal, valid, binding and enforceable obligation of the other parties thereto, and is in full force and effect, in each case, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditor's rights and except to the extent that the availability of specific performance, injunctive relief or other equitable remedies is subject to the discretion of the court before which any proceeding thereof may be brought; (b) each Seller's possession and quiet enjoyment of the Leased Real Property demised under such Seller's respective Lease has not been disturbed; (c) no Seller is, and to each Seller's Knowledge, no other party to the Lease, is in breach or default under such Lease, and, to each Seller's Knowledge, no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a breach or default, or permit the termination, modification or acceleration of rent under such Lease; (d) Seller has not subleased, licensed or otherwise granted any Person the right to use or occupy such Leased Real Property or any portion thereof; and (e) Seller has not collaterally assigned or granted any other security interest in such Lease, the Leased Real Property or any interest therein.

(iv) To Sellers' Knowledge, Sellers' use of the Leased Real Property does not materially violate any material zoning, building, health, fire, water use or similar statute or regulation and Seller has received no written notice regarding such violation.

(v) Sellers have not received any notice that either the whole or any portion of the Leased Real Property is to be condemned, requisitioned or otherwise taken by any public authority.

(vi) To Sellers' Knowledge, there is no current material interruption in the delivery of adequate service of any utilities or other public authorities required in the operation of the Acquired Stores.

(vii) All title documents and any surveys, engineering and technical reports, soils testing reports, property condition reports, reports of environmental or hazardous materials inspections and title opinions or other assurances with respect to the Leased Real Property in the possession of any Seller have been made available to Buyers.

(k) *Assumed Contracts*. Except as set forth in Section 4(k) of the Disclosure Schedule, with respect to each of the Assumed Contracts, subject to the entry of the Sale Order: (a) such Assumed Contract is a legal, valid, binding, and enforceable obligation of the Seller that is a party thereto, and to Sellers' Knowledge, such Lease is a legal, valid, binding and enforceable obligation of the other parties thereto, in each case, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditor's rights and except to the extent that the availability of specific performance, injunctive relief or other equitable remedies is subject to the discretion of the court before which any proceeding thereof may be brought; and (b) no Seller is, and to each Seller's Knowledge, no other party to the Assumed Contract is, in breach or default under such Assumed Contract, and, to each Seller's Knowledge, no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a breach or default, or permit the termination, modification or acceleration of payment under such Assumed Contract.

(l) *Litigation*. In respect of the Purchased Assets or the operation of the Acquired Stores, (i) none of Sellers is (A) subject to any outstanding injunction, judgment, order, decree, ruling, or charge or (B) a party to any action, suit, proceeding, hearing, or investigation of, in, or before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction, and (ii) to the Knowledge of each Seller, none of the foregoing has been threatened, except where the injunction, judgment, order, decree, ruling, action, suit, proceeding, hearing, or investigation would not have a Material Adverse Effect.

(m) *Environmental, Health, and Safety Matters*. In each case, to the Knowledge of Sellers:

(i) All Sellers are in material compliance with all Environmental, Health, and Safety Requirements.

(ii) No Seller has received any written notice, report or other information regarding any actual or alleged material violation of Environmental, Health, and Safety Requirements, or any material liabilities or potential material liabilities (whether accrued, absolute, contingent, unliquidated or otherwise), including any investigatory, remedial or corrective obligations, relating to any Seller or any Acquired Store arising under Environmental, Health, and Safety Requirements.

(iii) No underground tank or other underground storage receptacle for Hazardous Substances is located on or under the Leased Real Property, and there have been no releases (i.e., any past or present releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping) or threatened releases of hazardous substances on, upon, into or from any of the Leased Real Property, except in material compliance with applicable Environmental, Health and Safety Requirements.

(iv) This Section 4(m) contains the sole and exclusive representations and warranties of Sellers with respect to any environmental, health, or safety matters, including, without limitation, any arising under any Environmental, Health, and Safety Requirements.

(n) *Labor Matters*. To the Knowledge of Sellers, there are no claims by any or on behalf of any of the employees at the Acquired Stores pending with respect to their employment or benefits incident thereto, including, but not limited to, sexual harassment or discrimination claims, claims for wages or claims arising under workers' compensation laws (collectively, "*Employee Claims*"), and to the Knowledge of Sellers, there is no state of facts or event which could reasonably be

expected to form the basis for any Employee Claims. To the Knowledge of Sellers, there are no labor disputes, strikes or lockouts pending between any Seller and any of the employees engaged in the operation of any Acquired Store, and to the Knowledge of Sellers, there have been no organizational efforts during the past five years involving any of such employees to organize into a collective bargaining unit. To Sellers' Knowledge, in connection with the operation of the Acquired Stores, each Seller has complied in all material respects with all material laws relating to employment and labor, including any provisions thereof relating to compensation, hours, collective bargaining, discrimination, civil rights, safety and health, workers' compensation and the collection and payment of social security and other taxes.

(o) *Employee Benefit Plans; ERISA*. Sellers have made available to Buyers a copy of any employee handbook that has been given to employees of the Acquired Stores and a copy of each group health plan that is subject to COBRA. Other than pursuant to COBRA, there are no facts or circumstances that could, directly or indirectly, subject Buyer or any of its Affiliates to any liability of any nature with respect to any Employee Benefit Plan.

(p) *Transferred Intellectual Property*. Sellers or JEC are the sole owners of the Transferred Intellectual Property. Sellers have the right to use all Transferred Intellectual Property in the conduct of the business of the Acquired Stores as currently conducted. To Sellers' Knowledge, Sellers have taken all actions reasonably necessary to maintain the Transferred Intellectual Property (including, without limitation, all trade secrets and registrations comprising the Transferred Intellectual Property) and its rights to use the Transferred Intellectual Property. No claims have been asserted or threatened, nor has any Seller received notice of (and to each Seller's Knowledge there is no basis for) any such claim that (i) any Seller has infringed upon or misappropriated the rights of any other person in respect of any Transferred Intellectual Property or (ii) any Transferred Intellectual Property or the use by any Seller of such Transferred Intellectual Property is invalid or unenforceable. To the Knowledge of each Seller, none of the Transferred Intellectual Property (i) is being infringed upon by any other person or (ii) is subject to any judgment, order, or decree restricting the use thereof.

(q) *Disclaimer of Other Representations and Warranties*. Except as expressly set forth in this Section 4, Sellers make no representation or warranty, express or implied, at law or in equity, in respect of Sellers or any of their respective assets, liabilities or operations, including with respect to merchantability or fitness for any particular purpose, and any such other representations or warranties are hereby expressly disclaimed. Buyers hereby acknowledge and agree that, except to the extent specifically set forth in this Section 4, the Buyer Parties are purchasing the Purchased Assets on an "as-is, where-is" basis. Buyers hereby acknowledge and agree that any consequences arising solely from Sellers' filing of the Chapter 11 Case in accordance with this Agreement shall not be deemed a breach of any of the representations or warranties set forth in this Agreement.

5. *Pre-Closing Covenants*. The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing.

(a) *General*. Each of the Parties will use its commercially reasonable efforts to take all action and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement (including satisfaction, but not waiver, of the Closing conditions set forth in Section 7 below).

(b) *Filings*. Each Party shall cooperate with any other Party in obtaining all authorizations, consents, and approvals of governments and governmental agencies that may be or become necessary in connection with the consummation of the transactions contemplated by this Agreement, and to take all reasonable actions to avoid the entry of any order or decree by governments and governmental agencies prohibiting the consummation of the transactions contemplated hereby, and shall furnish to the other all such information in its possession as may

be necessary for the completion of the notifications to be filed by the other; *provided that*, in complying with this Section 5(b) hereof and subject to Section 5(g) below (which will require Buyers to expend out-of-pocket monies to obtain consents of alcoholic beverage control and similar governmental authorities), neither of the Buyers nor Sellers shall be required to expend any out-of-pocket monies to obtain any approval or consent required hereunder, except for customary professional (including attorneys) fees and filing fees incident to the transactions contemplated hereby, or to become subject to any condition or requirement which would be adverse to such Party.

(c) *Operation of Business*. Subject to any restrictions and obligations imposed by the Bankruptcy Court, no Seller will engage in any practice, take any action, or enter into any transaction outside the Ordinary Course of Business, including, without limitation, any amendment or change to its employee retention program. Without limiting the generality of the foregoing, each Seller will refrain from doing any of the following in respect of the Purchased Assets or the operation of the Acquired Stores: (i) disposing of, or transferring, any material Purchased Asset except for the sale of such assets in the Ordinary Course of Business, (ii) transferring any tangible Purchased Asset from any Acquired Store to any other location outside the Ordinary Course of Business, (iii) amending, terminating or modifying the material terms of any of the Assumed Contracts, or (iv) making any change in the compensation payable or to become payable to the employees of the Acquired Stores, other than increases or promotions in the Ordinary Course of Business; provided, however, notwithstanding anything to the contrary in the preceding sentence, Sellers may, upon prior written notice to Buyers in their reasonable discretion take such actions in connection with or as a result of the consequences (adverse or otherwise) of filing the Chapter 11 Case, if any, to cure defaults in respect of the Assumed Contracts.

(d) *Access.*

(i) Sellers will permit representatives of each Buyer (including legal counsel and accountants) to have reasonable access at reasonable times, and in a manner so as not to interfere with the normal business operations of Sellers, to all premises, properties, personnel (including its IT support personnel), books, landlords, suppliers, vendors, records (including tax records), contracts, and any other documents or records of or pertaining to the Purchased Assets; *provided*, *however*, Buyers and their representatives shall coordinate all requests for access and information with the chief restructuring officer of Sellers. Such access shall include the provision of adequate workspace for at least one representative of each Buyer with telephone, computer, printer and internet access. Buyers will treat and hold as such any Confidential Information they receive from Sellers in the course of the reviews contemplated by this Section 5(d), including, without limitation, any Confidential Information they received prior to the date hereof, will not use any of the Confidential Information except in connection with this Agreement, and, if this Agreement is terminated for any reason whatsoever, will return to Sellers or destroy all tangible embodiments (and all copies) of the Confidential Information which are in their possession. Sellers shall promptly deliver to each Buyer copies of all pleadings, motions, notices, statements, schedules, applications, reports and other papers filed by Sellers in their Chapter 11 Case as Buyers shall reasonably request. Notwithstanding the preceding sentence, if either Buyer or any of its representatives becomes legally required to disclose any Confidential Information that it is otherwise obligated to hold in confidence pursuant to this Section 5(d)(i), such Buyer will promptly notify the Sellers and will use all commercially reasonable efforts to cooperate with the Sellers so that the Sellers may seek a protective order or other appropriate remedy and/or waive compliance with this Section 5(d)(i). If such protective order or other remedy is not obtained, or if the Sellers waive compliance with this Section 5(d)(i), such Buyer will (a) disclose only that portion of the Confidential Information which its legal counsel advises it is compelled to disclose or

otherwise stand liable for contempt or suffer other similar significant corporate censure or penalty, (b) use all commercially reasonable efforts to obtain reliable assurance requested by the Sellers that confidential treatment will be accorded such Confidential Information, and (c) promptly provide the Sellers with a copy of the Confidential Information so disclosed, in the same form and format so disclosed, together with a list of all Persons to whom such Confidential Information was disclosed.

(ii) Sellers will provide to Buyers the information set forth on Schedule 5(d) substantially in accordance with the time periods set forth on such Schedule. To the extent that such information relates to trade secrets or other proprietary information of third parties, the parties will reasonably cooperate with one another to ensure that the provision of such information does not violate any applicable terms of the licenses or other agreements relating to such information.

(iii) Sellers will provide the Buyers with reasonable access to the Acquired Stores which they intend to purchase for the purpose of installing, at such Buyer's cost, wide area network lines, computer software and related assets necessary to effect the transition the Acquired Stores on the Closing Date to such Buyer's information technology systems; *provided*, *however*, that if this Agreement is terminated, such Buyer will bear the cost of removing any such assets; and provided further that such installation shall not occur in a manner that unreasonably interferes with Sellers' operation of the Acquired Stores; and *provided further* that in no event shall Buyers connect the installed equipment or otherwise have access to Sellers' computer network prior to Closing. Further, Sellers will permit the Buyers to have reasonable access (*provided that* such access shall be to the extent practicable during times other than normal business hours and Buyers shall bear any associated costs (including, without limitation, any associated payroll and related costs)) to its personnel prior to the Closing so that Buyers may train such personnel in the use of Buyers' installed equipment and systems.

(e) *Notice of Developments*. Sellers shall notify Buyers of any development causing a breach of any of the representations and warranties in Section 4 above. Unless Buyers have the right to terminate this Agreement pursuant to Section 9(a)(ii) below by reason of the development and exercise that right in accordance with Section 9(a)(ii) below, the written notice pursuant to this Section 5(e) will be deemed to have amended the Disclosure Schedule, to have qualified the representations and warranties contained in Section 4 above, and to have cured any misrepresentation or breach of warranty that otherwise might have existed hereunder by reason of the development.

(f) *Bankruptcy Court Approval and Related Matters.*

(i) Each Seller shall (in each case, in accordance with all applicable requirements of, and procedures under, the Bankruptcy Code and subject in all cases to the approval of the Bankruptcy Court) use their commercially reasonable efforts to (a) assign to the Buyer purchasing the assets of such Seller hereunder at the Closing, each of the Assumed Contracts to which it is a party, in accordance with the provisions of Section 2(a) and (c) above, (b) seek the approval of the Sale Order approving the sale of the Purchased Assets to such Buyer, and thereafter take all actions as may be reasonably necessary to cause Such Order to be issued, entered and become a Final Order, and (c) timely serve a copy of the Sale Order upon any and all parties in interest entitled or required to receive notice under all applicable laws, rules and regulations and orders of the Bankruptcy Court, including but not limited to, all governmental taxing authorities or agencies in the jurisdictions where the Seller conducts or previously conducted business prior to the hearing on such motion.

(ii) Sellers, on the one hand, and Buyers, on the other hand, shall cooperate reasonably with the other and its representatives in connection with the Sale Order and the bankruptcy proceedings in connection therewith. Such cooperation shall include, but not be limited to, (A) consulting with Buyers at Buyers' reasonable request concerning the status of such proceedings, (B) providing Buyers with advance copies of pleadings, notices, proposed orders and other documents in connection with the Sale Order for Buyers' review and comment and copies of other pleadings, notices, proposed orders and other documents in connection the bankruptcy proceedings as soon as reasonably available prior to any submission thereof to the Bankruptcy Court, and (C) promptly providing Buyers with copies of all papers submitted to the Bankruptcy Court. Nothing contained herein shall require any Party to agree to any amendment of this Agreement, to expend any out-of-pocket funds (other than customary professional (including attorneys) fees and filing and service fees and costs incident to such proceedings) or to agree to any condition or requirement adverse to such Party.

(iii) If, following the Closing, the Sale Order or any other order of the Bankruptcy Court relating to this Agreement shall be appealed by any Person (or a petition for certiorari or motion for rehearing or reargument shall be filed with respect thereto), Sellers shall take all steps as may be reasonable and appropriate to defend against such appeal, petition or motion, and Buyers agree to cooperate in such efforts, and each Party hereto shall endeavor to obtain an expedited resolution of such appeal. Nothing contained herein shall modify the termination rights set forth in Section 9 of this Agreement.

(iv) Buyers acknowledge and agree that the Lenders may credit bid for all or a portion of the business and assets of Sellers.

(v) Buyers agree to cooperate with Sellers in connection with furnishing information pertaining to the satisfaction of the requirement of adequate assurances of future performance as required under Section 362(f)(2)(B) of the Bankruptcy Code.

(vi) Notwithstanding anything herein to the contrary, Sellers shall have the right, in their sole discretion (without any obligation to notify or otherwise consult with Buyers) to reject any or all Excluded Assets, including any or all contracts other than the Assumed Contracts, and to take all actions necessary to effectuate any such rejection or rejections, including prosecuting a motion in the Bankruptcy Court seeking authorization, as necessary, to reject such Excluded Assets.

(g) *Liquor Licenses and Permits*. Each Buyer shall be responsible for and use its commercially reasonable efforts to obtain all required liquor licenses and permits from alcoholic beverage control and similar governmental authorities in connection with the operation of the Acquired Stores. If any such required consents have not been obtained with respect to any of the Acquired Stores or any of the stores subject to the Denver Management Agreement, or the Gwinnett Management Agreement (if acquired by Tango or any Tango designee pursuant to Section 2(e)(v) hereof) such that such Buyer would not be able to operate such Acquired Store, Denver store, or Gwinnett store (herein a "Failed Site") as applicable on and after the Closing Date, then Sellers shall, to the extent reasonably practicable enter into such management, concession or similar arrangements reasonably requested by such Buyer (an "*Alternative Arrangement*") as may be permitted under alcoholic beverage control laws that would permit the operation of the Failed Site(s) by such Buyer after the Closing without any adverse economic effect on such Buyer or Sellers. If, as of the Closing Date, no Alternative Arrangement can be implemented without adverse impact on such Buyer or Sellers, then at the Closing, (i) the amount of the Purchase Price attributable to such Failed Site(s) (as set forth on *Schedule 5(g)*) will be set aside from the Purchase Price and paid by the applicable Buyer to the Escrow Agent; provided, however, there shall be no Purchase Price set aside in connection with the Denver store under any

circumstances and the Escrow Agent shall not receive or hold any funds in connection with the Denver Store, (ii) the Closing as to such Failed Site(s) will be extended (although not beyond the Outside Closing Date) until the required consent(s) are obtained, (iii) if the Closing as to such Failed Site(s) occurs, the Escrow Agent shall pay all funds held by it in respect of the applicable Failed Site(s) to the Sellers, (iv) if the Closing as to such Failed Site(s) does not occur prior to the Outside Closing Date as a result of the failure to obtain any required consents of alcoholic beverage control and similar governmental authorities which is primarily attributable to Sellers operations of such Failed Site(s) or the physical characteristics of such Failed Site(s) (in each case, with the burden of proof on such Buyer), the Escrow Agent shall return all funds held by it in respect of the applicable Failed Site(s) to such Buyer, and (v) if the Closing as to such Failed Site(s) does not occur prior to the Outside Closing Date for any other reason, the Escrow Agent shall return all funds held by it in respect of the applicable Failed Site(s) to the Sellers.

(h) *Employees and Employee Benefits.*

(i) Sellers will terminate its employment relationships with the Transferred Employees on the Closing Date.

(ii) Each Buyer and/or one or more of its designees shall offer employment, to be effective as of the Closing Date, to substantially all of the employees previously employed by Sellers at the Acquired Stores the assets of which are being purchased by such Buyer hereunder. The employment of any employees of Sellers to whom a Buyer offers employment and who accept such employment with a Buyer after the Closing Date (the "*Transferred Employees*") shall be at-will.

(iii) Sellers shall retain the following liabilities or obligations to employees of the Acquired Stores: (i) all claims for compensation, including but not limited to, any severance obligations or accrued but unused vacation where relevant, for periods prior to the Closing Date, (ii) except with respect to COBRA as specified in paragraph (iv) below, all liabilities under the Employee Benefit Plans, and (iii) all liabilities incurred as a result of the failure to provide notice or severance pay, if any, that may be due to any employee of Sellers as a result of such Seller's termination of employee's employment in connection with the consummation of the transactions contemplated hereby. Each Buyer shall be responsible for any obligations arising under COBRA with respect to all "M&A qualified beneficiaries" in respect of the Acquired Stores, the assets of which are being purchased by such Buyer, as defined in Treasury Regulation Section 54.4980B-9.

(iv) Sellers shall provide Buyers with a list of every person who is or may be a qualified beneficiary eligible to elect or actually covered by COBRA under Seller's group health plans, a description of the qualifying event (which may include the sale contemplated by this Agreement and the failure to become a Transferred Employee), the date as of which the COBRA coverage period began or will begin for each such person, and such other data as Buyers shall request in order to provide continuation coverage under Buyers' group health plans. In addition, Sellers shall provide all information to Buyers as may be necessary or appropriate to determine whether there have been any failures to comply with the requirements of COBRA for any current or former employee of Seller, or any spouse, former spouse, dependent child or former dependent child of any such employee on or prior to the Closing Date so that such failures may be corrected. Subject to Sellers' provision of the foregoing data requirements in this Section 5(h)(iv), Buyers shall be responsible for any obligations arising under COBRA as a successor employer with respect to all "M&A qualified beneficiaries" in respect of the Acquired Stores as defined in Treasury Regulation Section 54.4980B-9.

(v) Effective as of the Closing Date, each Buyer shall make available to its Transferred Employees the employee benefit plan(s) maintained by such Buyer (or one of its Affiliates) generally for its employees (the "*Buyer Plans*") in accordance with their terms. To the extent permitted by the terms of the Buyer Plans, each Buyer will (i) waive all deductibles, waiting periods and limitations with respect to pre-existing conditions covered under any group health Buyer Plans that would otherwise be applicable to employees of Sellers under such Buyer Plans as of the date hereof, and (ii) grant full past service credit with the Sellers for eligibility, benefit accrual and for vesting to the Transferred Employees for service with Sellers under any of the Buyer Plans.

(vi) Neither this Agreement nor the consummation of the transactions contemplated by this Agreement will entitle any employee, including but not limited to, Transferred Employees, to any other severance or seniority benefits from Buyers nor will it accelerate compensation due any such Transferred Employee as of the Closing Date from Buyers.

(i) *Gift Certificates*. As of the date hereof, Seller and its Affiliates will not issue any Gift Certificates which may be redeemed by consumers at the Acquired Stores unless the consideration received by the Seller and its Affiliates from such issuance is set aside and made a part of the Purchased Assets. Neither Buyers nor their Affiliates will issue any gift cards or gift certificates which may be redeemed by consumers at stores of the Sellers which are not Acquired Stores.

(j) *HSR Act Filing*. Tango and D&B shall use their commercially reasonable efforts to make the appropriate HSR Act filing within seven (7) days of the date hereof and such filing shall be based upon the aggregate Purchase Price as if the Tango Buyer Group were purchasing all the Purchased Assets relating to all the Acquired Stores. Sellers shall use their commercially reasonable efforts to make the appropriate HSR Act filing within seven (7) days of the date hereof.

(k) *JBC Brand License Agreement.* JBC and Tango shall enter into a brand license agreement in the form attached hereto as *Exhibit F* on or prior to the Closing, but in no event shall such agreement become effective unless both Buyers consummate the transactions contemplated herein. In no event shall such preceding agreement between Buyers be a closing condition for purposes of each Buyer's agreement hereunder with the Sellers.

6. *Post-Closing Covenants.*

(a) *General*. In case at any time after the Closing any further action is necessary to carry out the purposes of this Agreement, each of the Parties will take such further action (including the execution and delivery of such further instruments and documents) as any other Party may reasonably request, all at the sole cost and expense of the requesting Party.

(b) *Transition Services.*

(i) *Buyers Services.*

(A) For a period of one year after the Closing Date (the "*Transition Period*"), Sellers and their representatives shall have reasonable access to, and shall have the right to photocopy at their own expense, all of the Books and Records, including any computerized databases and files and programs and associated software relating to the pre-Closing operations of Sellers and/or the Purchased Assets and Assumed Liabilities as they existed as of the Closing Date, including but not limited to (i) the investigation, evaluation and prosecution of any and all claims retained by Sellers, (ii) the evaluation, allowance, distribution and defense of any and all claims brought against Sellers or their estates, and (iii) subject to any restrictions to such disclosure under applicable law, employees' records or other personnel and medical records, as of the Closing Date,

required by law, legal process or subpoena. During the Transition Period, Buyers agree to provide Sellers and any of their representatives, upon reasonable request and prior notice, with reasonable access to employees of Buyers (who may be former employees of Sellers) during normal business hours for purposes of winding down the estates of Sellers. Sellers agree to, and Sellers agree to cause their representatives to, treat confidentially any information obtained pursuant to this Section 6, including the information in the Books and Records. If Buyers shall desire to dispose of any such Books and Records upon or prior to one year after the Closing Date, Buyers shall, prior to such disposition, give Sellers a reasonable opportunity, at Sellers' expense, to segregate and remove such Books and Records as Sellers may select.

(B) Transition services shall be provided to Sellers by JBC Buyer Group for 90 days following the Closing Date after which time JBC may terminate such service at any time, provided that it has given Sellers at least twenty-one days notice of such termination; *provided*, *however*, such services shall be those services detailed on and provided in accordance with *Exhibit D*.

(ii) *Seller Services*. Sellers will permit employees and representatives of JBC (including legal counsel and accountants) to utilize Sellers' corporate headquarters in Louisville, Kentucky until such date the lease in respect of such headquarters is rejected by Sellers in accordance with their liquidating plan. JBC agrees to pay Sellers an amount of cash each month equal to the monthly rental payment required pursuant to the lease with respect to such premises; *provided*, *however*, that, upon 30 days' notice, JBC can terminate its use of such premises, and in such event, JBC will not be responsible to make any additional payments to Sellers upon expiration of such 30-day period.

(c) *WARN Act*. With respect to the Acquired Stores, each Buyer covenants that it will provide a sufficient number of job offers at sufficient terms and conditions of employment so as to not give rise to any WARN Act liabilities or obligations to the Sellers.

(d) *Individual Brand License Agreements*. Tango shall, as of the Closing, enter into license agreements substantially similar to the form of brand license agreement attached hereto as *Exhibit E* for the continuing operation of stores other than the Acquired Stores under the "Jillian's" brand.

7. *Conditions to Obligation to Close.*

(a) *Conditions to Buyers' Obligation*. Each Buyer's obligation to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction of the following conditions:

(i) the representations and warranties set forth in Section 4 above shall be true and correct in all material respects at and as of the Closing Date (in each case as such statements relate to the Acquired Stores that the applicable Buyer is purchasing hereunder), except to the extent that such representations and warranties are qualified by terms such as "material" and "Material Adverse Effect," in which case such representations and warranties shall be true and correct in all respects at and as of the Closing Date;

(ii) Sellers shall have performed and complied with all of their covenants hereunder in all material respects through the Closing, except to the extent that such covenants are qualified by terms such as "material" and "Material Adverse Effect," in which case Sellers shall have performed and complied with all of such covenants in all respects through the Closing;

(iii) there shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement, and no suit, action, claim, proceeding or investigation shall be pending before any court or quasi-judicial or administrative agency of any governmental entity in which it is sought to restrain or prohibit consummation of any of the transactions contemplated by this Agreement;

(iv) Sellers shall have delivered to Buyer a certificate to the effect that each of the conditions specified above in Section 7(a)(i)-(iii) is satisfied in all respects;

(v) the Parties shall have received all authorizations, consents, and approvals of governments and governmental agencies required in connection with the consummation of the transactions contemplated by this Agreement (other than any that may be required in respect of liquor licenses and permits), including, if applicable, pursuant to the HSR Act (including the expiration or termination of the applicable waiting periods (and any extensions thereof) under the HSR Act);

(vi) the Bankruptcy Court shall have entered the Sale Order, which shall be a Final Order. Notwithstanding the foregoing, nothing in this Agreement shall preclude Buyer from consummating the transactions contemplated herein if Buyer waives the requirement that the Sale Order shall have become a Final Order. No notice of such waiver of this condition or any other condition to the Closing need be given except to Sellers, it being the intention of the Parties that Buyer shall be entitled to, and is not waiving, the protection of Section 363(m) of the Bankruptcy Code, the mootness doctrine and any similar statute or body of law if the Closing occurs in the absence of the Sale Order becoming a Final Order;

(vii) the relevant Sellers shall have entered into each of the Ancillary Agreements; and

(viii) all actions to be taken by Sellers in connection with consummation of the transactions contemplated hereby and all certificates, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to Buyer.

Buyer may waive any condition specified in this Section 7(a) if it executes a writing so stating at or prior to the Closing; *provided*, *however*, the satisfaction of the closing conditions for one Buyer Group shall not be a closing condition for the other Buyer Group.

(b) *Conditions to Sellers' Obligation*. Sellers' obligation to consummate the transactions to be performed by them in connection with the Closing is subject to satisfaction of the following conditions:

(i) the representations and warranties set forth in Section 3 above shall be true and correct in all material respects at and as of the Closing Date, except to the extent that such representations and warranties are qualified by terms such as "material" and "Material Adverse Effect," in which case such representations and warranties shall be true and correct in all respects at and as of the Closing Date;

(ii) Both Buyers shall have performed and complied with all of their covenants hereunder in all material respects through the Closing, except to the extent that such covenants are qualified by terms such as "material" and "Material Adverse Effect," in which case both Buyers shall have performed and complied with all of such covenants in all respects through the Closing;

(iii) there shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement, and no suit, action, claim, proceeding or investigation shall be pending before any court or quasi-

judicial or administrative agency of any governmental entity in which it is sought to restrain or prohibit consummation of any of the transactions contemplated by this Agreement;

(iv) the Parties shall have received all authorizations, consents, and approvals of governments and governmental agencies required in connection with the consummation of the transactions contemplated by this Agreement (other than any that may be required in respect of liquor licenses and permits), including, if applicable, pursuant to the HSR Act (including the expiration or termination of the applicable waiting periods (and any extensions thereof) under the HSR Act);

(v) the Bankruptcy Court shall have entered the Sale Order, which shall be a Final Order. Notwithstanding the foregoing, nothing in this Agreement shall preclude Sellers from consummating the transactions contemplated herein if Sellers, in their sole discretion, waives the requirement that the Sale Order shall have become a Final Order. No notice of such waiver of this condition or any other condition to the Closing need be given except to Buyers, it being the intention of the Parties that Sellers shall be entitled to, and are not waiving, the protection of Section 363(m) of the Bankruptcy Code, the mootness doctrine and any similar statute or body of law if the Closing occurs in the absence of the Sale Order becoming a Final Order;

(vi) the relevant Buyer Parties shall have entered into each of the Ancillary Agreements;

(vii) all actions to be taken by Buyers in connection with consummation of the transactions contemplated hereby and all certificates, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to Sellers; and

(viii) Subject to Section 5(g), the Closing in respect of the Tango Acquired Stores and the JBC Acquired Stores shall occur concurrently and, to the extent that Sellers waive such condition and agree to close the transactions contemplated herein with the JBC Buyer Group, Sellers shall enter into a brand license agreement substantially in the form of *Exhibit F* attached hereto).

Sellers may waive any condition specified in this Section 7(b) if they execute a writing so stating at or prior to the Closing.

(c) *Deliveries at Closing*. At the Closing:

(i) Each Buyer shall deliver to Sellers the following items:

(A) the Purchase Price (less the Deposit deposited by such Buyer, which shall be released by the Escrow Agent and applied to the respective Purchase Price as provided in Section 2(e)(iii) hereof) into the trust account of the debtors-in-possession to be allocated in accordance with the orders of the Bankruptcy Court;

(B) a certificate to the effect that each of the conditions specified above in Section 7(b)(i)-(iii) is satisfied in all respects; and

(C) each of the Ancillary Agreements to which either of the Buyers is a party.

(ii) Sellers shall deliver to each Buyer the following items:

(A) a certificate to the effect that each of the conditions specified above in Section 7(a)(i)-(iii) is satisfied in all respects; and

(B) each of the Ancillary Agreements to which any Seller is a party.

8. *No Survival of Representations and Warranties*. None of the representations and warranties of Sellers or Buyers contained in this Agreement or made in any other documents or instruments delivered pursuant to this Agreement shall survive the Closing hereunder.

9. *Termination.*

(a) *Termination of Agreement*. Certain of the Parties may terminate this Agreement as provided below:

(i) Buyers and Sellers may terminate this Agreement by written consent of the Parties at any time prior to the Closing;

(ii) Either Buyer, as to it, may terminate this Agreement by giving written notice to Sellers at any time prior to the Closing in the event (A) Sellers have within the then previous five (5) business days given Buyers any notice pursuant to Section 5(e) above and (B) the development that is the subject of the notice has caused the representations and warranties in Section 4 above as such statements relate to the Acquired Stores that the applicable Buyer is purchasing hereunder to not be true and correct in all material respects, except to the extent that any such representation or warranty is qualified by terms such as "material" and "Material Adverse Effect," in which case if such development that is the subject of the notice has caused the representation or warranty in Section 4 above as such statements relate to the Acquired Stores that the applicable Buyer is purchasing hereunder to not be true and correct in all respects;

(iii) Either Buyer, as to it, may terminate this Agreement by giving written notice to Sellers at any time prior to the Closing (A) in the event Sellers have breached any material representation, warranty, or covenant contained in this Agreement (in the case of any representation or warranty as such statement relates to the Acquired Stores that the applicable Buyer is purchasing hereunder) in any material respect, a Buyer has notified Sellers of the breach, and the breach has continued without cure for a period of ten (10) days after the notice of breach, (B) upon the occurrence of a Material Adverse Effect or Material Adverse Change applicable to the Acquired Stores that the applicable Buyer is purchasing hereunder, or (C) if the Closing shall not have occurred on or before November 20, 2004, by reason of the failure of any condition precedent under Section 7(a) hereof (unless the failure results primarily from a Buyer's breaching any representation, warranty, or covenant contained in this Agreement);

(iv) Either Buyer, as to it, may terminate this Agreement by giving written notice to Sellers at any time prior to Closing (A) in the event Sellers have accepted or selected, and the Bankruptcy Court shall have approved, the bid or bids (including a credit bid) of any Person or Persons other than Buyers or any of their Affiliates to purchase all or a significant portion of the businesses and assets of Sellers (whether or not any transaction contemplated by any such bid or bids shall be consummated), or (B) if the Sale Order shall not have been entered by the Bankruptcy Court on or before October 25, 2004; *provided, however*, that the right to terminate this Agreement pursuant to this clause (B) shall not be available to such Buyer if such Buyer has failed to perform its material obligations under Section 5(f) of this Agreement in all material respects and such failure is then continuing;

(v) Sellers may terminate this Agreement by giving written notice to Buyers at any time prior to the Closing (A) in the event either Buyer has breached any material representation, warranty, or covenant contained in this Agreement in any material respect, Sellers have notified the applicable Buyer of the breach, and the breach has continued without cure for a period of ten (10) days after the notice of breach or (B) if the Closing shall not have occurred on or before November 20, 2004, by reason of the failure of any condition precedent under

Section 7(b) hereof (unless the failure results primarily from Sellers breaching any representation, warranty, or covenant contained in this Agreement);

(vi) Sellers may terminate this Agreement by giving written notice to Buyers at any time prior to Closing if the Sale Order shall not have been entered by the Bankruptcy Court on or before October 25, 2004; *provided*, *however*, that the right to terminate this Agreement pursuant to this clause (vi) shall not be available to Sellers if Sellers shall have failed to perform their material obligations under Section 5(f) of this Agreement in all material respects and such failure is then continuing; and

(vii) If Sellers receive a termination notice pursuant to this Section 9(a) by either Buyer Group, Sellers may terminate this Agreement by giving prior written notice to the other Buyer Group (in which case such termination by Sellers shall be in respect of the entire agreement) five (5) days in advance of the termination; *provided*, *however*, such termination shall not be effective if, in the event such other Buyer Group is Tango, Tango, within such five (5) day period, in writing explicitly expresses its intention to purchase all the Purchased Assets, including the Purchased Assets relating to the JBC Acquired Stores; *provided*, *further*, the preceding proviso, does not in any way limit Tango's obligation to assume the obligations of the JBC Buyer Group in accordance with Section 11.

(b) *Effect of Termination*. If any Party terminates this Agreement pursuant to Section 9(a) above, the Deposit shall be applied in accordance with Section 2(e)(iii), and all rights and obligations of the Parties hereunder shall terminate without any liability of any Party to any other Party, except for any liability of any Party then in breach; provided, however, notwithstanding anything herein to the contrary, any such liability shall not exceed a dollar amount equal to the amount of the Forfeiture Deposit; provided, further, that the confidentiality provisions contained in Section 5(d) above shall survive termination.

10. *Miscellaneous.*

(a) *Press Releases and Public Announcements*. No Party shall issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of Buyers and Sellers; provided, however, that any Party may make any public disclosure that they believe in good faith is required by applicable law (in which case they shall use best efforts to advise Buyers prior to making such disclosure.

(b) *No Third-Party Beneficiaries*. This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

(c) *Entire Agreement*. This Agreement (including the Ancillary Agreements and other documents referred to herein) constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

(d) *Succession and Assignment*. This Agreement and the Ancillary Agreements shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party shall assign either this Agreement or any of the Ancillary Agreements or any of its rights, interests, or obligations hereunder or thereunder without the prior written approval of Buyer and Sellers.

(e) *Counterparts*. This Agreement may be executed in one or more counterparts (including by means of facsimile), each of which shall be deemed an original but all of which together will constitute one and the same instrument.

(f) *Headings*. The Section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

(g) *Notices*. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given and received (i) when delivered personally to the recipient, (ii) one business day after being sent to the recipient by reputable overnight courier service (charges prepaid), (iii) one business day after being sent to the recipient by facsimile transmission, or (iv) four business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to Sellers:

4500 Bowling Boulevard, Suite 200
Louisville, KY 40207
Attention: Richard Walker
Facsimile: (502) 638-0635

With a copy to:

Kirkland & Ellis LLP
777 South Figueroa Street
Los Angeles, CA 90017
Attention: Eva H. Davis
James Kapp
Charles C. Pak
Facsimile: (213) 680-8500

If to Buyers or Buyer Parties:

Dave & Buster's, Inc.
2481 Manana Drive
Dallas, Texas 75220
Attention: Chief Executive Officer
Facsimile: 214-357-1536

With a copy to:

Hallett & Perrin, P.C.
2001 Bryan Street, Suite 3900
Dallas, Texas 75201
Attention: Lance M. Hardenburg
Bruce H. Hallett
Facsimile: 214-922-4170

and

JBC Acquisition Corporation
c/o Gemini Investors III, L.P.
20 William Street, Suite 250
Wellesley, MA 02481
Attention: James Goodman
Matt Keis
Facsimile: 781-237-7233

With a copy to:

McDermott Will & Emery LLP
28 State Street
Boston, MA 02109
Attention: Mark Stein
David Powers
Facsimile: 617-535-3800

Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

(h) *Governing Law*. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

(i) *Amendments and Waivers*. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Buyer and Sellers' Representative. No waiver by any Party of any provision of this Agreement or any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

(j) *Appointment of Sellers' Representative as Attorney-in-Fact*. Each Seller hereby irrevocably constitutes and appoints Sellers' Representative and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Seller and in the name of such Seller or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, including, without limitation, the Ancillary Agreements.

(k) *Severability*. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

(l) *Expenses*. Except as set forth in this Section 10(l), each of the Parties will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby. For purposes of clarification, Buyer Parties, on the one hand, and the Sellers, on the other hand, shall each be responsible for one half of any filing fees required pursuant to the HSR Act. Without limiting the generality of the foregoing, all transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees,

recording charges and other fees and charges (including any penalties and interest) incurred in connection with the consummation of the transactions contemplated by this Agreement shall be paid by Buyers when due, and Buyers shall, at its own expense, file all necessary Tax Returns and other documentation with respect to all such Taxes, fees and charges, and, if required by applicable law, the Parties will, and will cause their Affiliates to, join in the execution of any such Tax Returns and other documentation.

(m) *Construction*. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation.

(n) *Incorporation of Exhibits and Schedules*. The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

(o) *Cooperation on Tax Matters*. Sellers shall (and shall cause their respective Affiliates to) cooperate fully with Buyers and make available or cause to be made available to Buyers for consultation, inspection and copying (at Buyers' expense) in a timely fashion such personnel, Tax data, relevant Tax Returns or portions thereof and filings, files, books, records, documents, financial, technical and operating data, computer records and other information as may be reasonably required (i) for the preparation by Buyers of any Tax Returns or (ii) in connection with any Tax audit or proceeding to the extent such Tax audit or proceeding relates to or arises from the transactions contemplated by this Agreement.

(p) *Taxes Relating To Purchased Assets and Assumed Liabilities*.

(i) Sellers shall use their commercially reasonable efforts to obtain an order which provides, in accordance with Section 1146(c) of the Bankruptcy Code, for an exemption under any law imposing a use, transfer, stamp or similar Tax on the transactions contemplated by this Agreement.

(ii) Each Buyer shall be liable for and pay all Taxes applicable to the Purchased Assets and Assumed Liabilities being acquired or assumed by it that are attributable to taxable years or periods beginning on the Closing Date and with respect to any Straddle Period, the portion of such Straddle Period beginning on the Closing Date. For purposes of this Agreement, "*Straddle Period*" shall mean any taxable period beginning on, or before and ending after the Closing Date.

(q) *Performance*. Subject to a maximum aggregate liability equal to the Forfeiture Deposit, each of D&B and Gemini will cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth in this Agreement or in any Ancillary Agreement to be performed by any member of its respective Buyer Party. Sellers' Representative will cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth in this Agreement or in any Ancillary Agreement to be performed by any Seller.

11. *Purchase of all Acquired Stores by D&B*. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that to the extent that JBC is unable or unwilling to close or does not close on the Purchased Assets and Assumed Liabilities relating to the JBC Acquired Stores, Tango shall assume all obligations of the JBC Buyer Group under this Agreement (and to the extent the Closing does not occur with respect to all the Purchased Assets and Assumed Liabilities, then, in accordance with this Agreement, Sellers shall be entitled to the Forfeiture Deposit).

****

IN WITNESS WHEREOF, the Parties hereto have executed this Asset Purchase Agreement as of the date first above written.

TANGO ACQUISITION, INC.

By: _____

Name:
Title:

DAVE & BUSTER'S, INC.

By: _____

Name:
Title:

JBC ACQUISITION CORPORATION

By: _____

Name:
Title:

GEMINI INVESTORS III, L.P.
By: Gemini GP LLC
Its: General Partner

By: _____

Name:
Title:

JILLIAN'S ENTERTAINMENT HOLDINGS, INC.

By: _____

Name:
Title:

JILLIAN'S ENTERTAINMENT CORPORATION

By: _____

Name:
Title:

JILLIAN'S BILLIARD CAFE OF AKRON, INC.

By: _____

Name:
Title:

JILLIAN'S BILLIARD CAFE OF COLUMBIA, SOUTH CAROLINA, INC.

By: _____

Name:
Title:

JILLIAN'S BILLIARD CAFE OF RALEIGH, NORTH CAROLINA, INC.

By: _____

Name:
Title:

JILLIAN'S BILLIARD CLUB OF CHARLOTTE, NC, INC.

By: _____

Name:
Title:

JILLIAN'S BILLIARD CLUB OF LOUISVILLE, KENTUCKY, INC.

By: _____

Name:
Title:

JILLIAN'S BILLIARD CLUB OF MANCHESTER, NH, INC.

By: _____

Name:
Title:

JILLIAN'S BILLIARD CLUB OF PASADENA, INC.

By: _____

Name:
Title:

JILLIAN'S BILLIARD CLUB OF SEATTLE, INC.

By: _____

Name:
Title:

JILLIAN'S MANAGEMENT COMPANY, INC.

By: _____

Name:
Title:

JILLIAN'S OF ALBANY, NY, INC.

By: _____

Name:
Title:

JILLIAN'S OF ARUNDEL, MD, INC.

By: _____

Name:
Title:

JILLIAN'S OF CHAMPAIGN-URBANA, IL, L.P.

By: _____

Name:
Title:

JILLIAN'S BILLIARD CLUB OF CLEVELAND, INC.

By: _____

Name:
Title:

JILLIAN'S BILLIARD CLUB OF CLEVELAND HEIGHTS LIMITED PARTNERSHIP

By: _____

Name:
Title:

JILLIAN'S OF CONCORD, NC, INC.

By: _____

Name:
Title:

JILLIAN'S OF COVINGTON, KENTUCKY, INC.

By: _____

Name:
Title:

JILLIAN'S OF FARMINGDALE, NY, INC.

By: _____

Name:
Title:

JILLIAN'S OF FRANKLIN, PA, INC.

By: _____

Name:
Title:

JILLIAN'S OF GWINNETT, GA, INC.

By: _____

Name:
Title:

JILLIAN'S OF HOLLYWOOD, CA, INC.

By: _____

Name:
Title:

JILLIAN'S OF HOUSTON, TX, INC.

By: _____

Name:
Title:

JILLIAN'S OF INDIANAPOLIS, IN, INC.

By: _____

Name:
Title:

JILLIAN'S OF KATY, TX, INC.

By: _____

Name:
Title:

JILLIAN'S OF MEMPHIS, TN, INC.

By: _____

Name:
Title:

JILLIAN'S OF MINNEAPOLIS, MN, INC.

By: _____

Name:
Title:

JILLIAN'S OF NASHVILLE, TN, INC.

By: _____

Name:
Title:

JILLIAN'S OF NORFOLK VA, INC.

By: _____

Name:
Title:

JILLIAN'S OF SAN FRANCISCO, CA, INC.

By: _____

Name:
Title:

JILLIAN'S OF SCOTTSDALE, AZ, INC.

By: _____

Name:
Title:

JILLIAN'S OF WESTBURY, NY, INC.

By: _____

Name:
Title:

JILLIAN'S BILLIARD CLUB OF WORCESTER LIMITED PARTNERSHIP

By: _____

Name:
Title:

JILLIAN'S OF YOUNGSTOWN, OH, INC.

By: _____

Name:
Title:

JILLIAN'S VENDING LIMITED PARTNERSHIP

By: _____

Name:
Title:

RIVER VENDING, INC.

By: _____

Name:
Title:

JILLIAN'S AMERICA LIVE OF MINNEAPOLIS, INC.

By: _____

Name:
Title:

Exhibit 12.1

Dave & Buster's, Inc.
Computation of Ratio of Earnings to Fixed Charges
(dollars in thousands, except ratios)

	Fiscal year ended					Thirteen weeks ended	37 Day Period from January 30, 2006 to March 7, 2006	54 Day Period from March 8, 2006 to April 30, 2006
	February 3, 2002(1)	February 2, 2003(1)	February 1, 2004(1)	January 30, 2005(5)	January 29, 2006	May 1, 2005		
	(Predecessor)	(Predecessor)	(Predecessor)	(Predecessor)	(Predecessor)	(Predecessor)	(Predecessor)	(Successor)
Income before provision for income taxes	$ 11,358	$ 7,680	$ 16,540	$ 19,805	$ 6,304	$ 7,183	$ 908	$ (3,244)
Add: Total fixed charges (per below)	14,448	15,171	14,722	14,837	18,978	4,818	1,832	6,973
Less: Capitalized interest	892	361	170	668	295	15	70	39
Total income before provision for income taxes, plus fixed charges, less capitalized interest	24,914	22,490	31,092	33,974	24,987	11,986	2,670	3,690
Fixed charges:								
Interest expense(3)	7,862	7,830	7,444	6,153	7,429	1,926	688	3,975
Bridge funding fee	—	—	—	—	—	—	—	1,313
Capitalized interest	892	361	170	668	295	15	70	39
Estimate of interest included in rental expense(4)	5,694	6,980	7,108	8,016	11,254	2,877	1,074	1,646
Total fixed charges	$ 14,448	$ 15,171	$ 14,772	$ 14,837	$ 18,978	$ 4,818	$ 1,832	$ 6,973
Ratio of earnings to fixed charges(2)	1.72x	1.48x	2.11x	2.29x	1.32x	2.49x	1.46x	—

(1) As more fully described in "Management's discussion and analysis of financial condition and results of operations," we have restated our previously issued financial statements for these periods due to certain lease accounting issues.

(2) Earnings for the 54 day period ended April 30, 2006 (Successor) were insufficient to cover the fixed charges by $3,283.

(3) Interest expense includes interest in association with debt and amortization of debt issuance costs.

(4) Fixed charges include our estimate of interest included in rental payments (one-third of rent expense under operating leases).

(5) On November 1, 2004, we completed the acquisition of nine Jillian's locations, pursuant to an asset purchase agreement, for cash and the assumption of certain liabilities. The results of the acquired complexes are included in our consolidated results beginning on the date of acquisition.

Exhibit 21.1

Subsidiaries of Dave & Buster's, Inc.

D&B Leasing, Inc.	**Texas**
D&B Realty Holding, Inc.	**Missouri**
DANB Texas, Inc.	**Texas**
Dave & Buster's I, L.P.	**Texas**
Dave & Buster's Management Corporation, Inc.	**Delaware**
Dave & Buster's of California, Inc.	**California**
Dave & Buster's of Colorado, Inc.	**Colorado**
Dave & Buster's of Florida, Inc.	**Florida**
Dave & Buster's of Georgia, Inc.	**Georgia**
Dave & Buster's of Hawaii, Inc.	**Hawaii**
Dave & Buster's of Illinois, Inc.	**Illinois**
Dave & Buster's of Kansas, Inc.	**Kansas**
Dave & Buster's of Maryland, Inc.	**Maryland**
Dave & Buster's of Nebraska, Inc.	**Nebraska**
Dave & Buster's of New York, Inc.	**New York**
Dave & Buster's of Pennsylvania, Inc.	**Pennsylvania**
Dave & Buster's of Pittsburgh, Inc.	**Pennsylvania**
Tango Acquisition, Inc.	**Delaware**
Tango License Corporation	**Delaware**
Tango of Arizona, Inc.	**Delaware**
Tango of Arundel, Inc.	**Delaware**
Tango of Farmingdale, Inc.	**Delaware**
Tango of Franklin, Inc.	**Delaware**
Tango of Houston, Inc.	**Delaware**
Tango of Minnesota, Inc.	**Delaware**
Tango of North Carolina, Inc.	**Delaware**
Tango of Sugarloaf, Inc.	**Delaware**
Tango of Tennessee, Inc.	**Delaware**
Tango of Westbury, Inc.	**Delaware**
6131646 Canada Inc.	**Ontario**

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated May 11, 2006, in the Registration Statement (Form S-4) and related Prospectus of Dave & Buster's, Inc. for the registration of $175,000,000 of 11 1/4% Senior Notes due 2014.

/s/ Ernst & Young LLP

Dallas, Texas
July 24, 2006

Exhibit 25.1

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY
UNDER THE TRUST INDENTURE ACT OF 1939 OF A
CORPORATION DESIGNATED TO ACT AS TRUSTEE

o CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT TO SECTION 305(b)(2)

THE BANK OF NEW YORK TRUST COMPANY, N.A.

(Exact name of trustee as specified in its charter)

(State of incorporation if not a U.S. national bank)	**95-3571558** (I.R.S. employer identification no.)
700 South Flower Street **Suite 500** **Los Angeles, California** (Address of principal executive offices)	**90017** (Zip code)

Dave & Buster's, Inc.
(Exact name of obligor as specified in its charter)

Missouri (State or other jurisdiction of incorporation or organization)	**43-1532756** (I.R.S. employer identification no.)

D&B Leasing, Inc.
(Exact name of obligor as specified in its charter)

Texas (State or other jurisdiction of incorporation or organization)	**75-2955199** (I.R.S. employer identification no.)

D&B Realty Holding, Inc.
(Exact name of obligor as specified in its charter)

Missouri (State or other jurisdiction of incorporation or organization)	**43-1532957** (I.R.S. employer identification no.)

DANB Texas, Inc.
(Exact name of obligor as specified in its charter)

Texas (State or other jurisdiction of incorporation or organization)	**75-2617801** (I.R.S. employer identification no.)

Dave & Buster's I, L.P.
(Exact name of obligor as specified in its charter)

Texas	**75-2680048**
(State or other jurisdiction of incorporation or organization)	(I.R.S. employer identification no.)

Dave & Buster's Management Corporation, Inc.
(Exact name of obligor as specified in its charter)

Delaware	**20-1574573**
(State or other jurisdiction of incorporation or organization)	(I.R.S. employer identification no.)

Dave & Buster's of California, Inc.
(Exact name of obligor as specified in its charter)

California	**33-0733010**
(State or other jurisdiction of incorporation or organization)	(I.R.S. employer identification no.)

Dave & Buster's of Colorado, Inc.
(Exact name of obligor as specified in its charter)

Colorado	**84-1420593**
(State or other jurisdiction of incorporation or organization)	(I.R.S. employer identification no.)

Dave & Buster's of Florida, Inc.
(Exact name of obligor as specified in its charter)

Florida	**58-2223494**
(State or other jurisdiction of incorporation or organization)	(I.R.S. employer identification no.)

Dave & Buster's of Georgia, Inc.
(Exact name of obligor as specified in its charter)

Georgia	**58-1979705**
(State or other jurisdiction of incorporation or organization)	(I.R.S. employer identification no.)

Dave & Buster's of Hawaii, Inc.
(Exact name of obligor as specified in its charter)

Hawaii	**75-2915058**
(State or other jurisdiction of incorporation or organization)	(I.R.S. employer identification no.)

Dave & Buster's of Illinois, Inc. (Exact name of obligor as specified in its charter)	
Illinois (State or other jurisdiction of incorporation or organization)	**43-1693115** (I.R.S. employer identification no.)
Dave & Buster's of Kansas, Inc. (Exact name of obligor as specified in its charter)	
Kansas (State or other jurisdiction of incorporation or organization)	**20-2089073** (I.R.S. employer identification no.)
Dave & Buster's of Maryland, Inc. (Exact name of obligor as specified in its charter)	
Maryland (State or other jurisdiction of incorporation or organization)	**52-1962723** (I.R.S. employer identification no.)
Dave & Buster's of Nebraska, Inc. (Exact name of obligor as specified in its charter)	
Nebraska (State or other jurisdiction of incorporation or organization)	**20-2089036** (I.R.S. employer identification no.)
Dave & Buster's of New York, Inc. (Exact name of obligor as specified in its charter)	
New York (State or other jurisdiction of incorporation or organization)	**13-3959054** (I.R.S. employer identification no.)
Dave & Buster's of Pennsylvania, Inc. (Exact name of obligor as specified in its charter)	
Pennsylvania (State or other jurisdiction of incorporation or organization)	**36-3919848** (I.R.S. employer identification no.)
Dave & Buster's of Pittsburgh, Inc. (Exact name of obligor as specified in its charter)	
Pennsylvania (State or other jurisdiction of incorporation or organization)	**74-2932642** (I.R.S. employer identification no.)
Tango Acquisition, Inc. (Exact name of obligor as specified in its charter)	
Delaware (State or other jurisdiction of incorporation or organization)	**20-1220294** (I.R.S. employer identification no.)

Tango License Corporation (Exact name of obligor as specified in its charter)	
Delaware (State or other jurisdiction of incorporation or organization)	**20-1657537** (I.R.S. employer identification no.)
Tango of Arizona, Inc. (Exact name of obligor as specified in its charter)	
Delaware (State or other jurisdiction of incorporation or organization)	**20-1209982** (I.R.S. employer identification no.)
Tango of Arundel, Inc. (Exact name of obligor as specified in its charter)	
Delaware (State or other jurisdiction of incorporation or organization)	**20-1574690** (I.R.S. employer identification no.)
Tango of Farmingdale, Inc. (Exact name of obligor as specified in its charter)	
Delaware (State or other jurisdiction of incorporation or organization)	**20-1574594** (I.R.S. employer identification no.)
Tango of Franklin, Inc. (Exact name of obligor as specified in its charter)	
Delaware (State or other jurisdiction of incorporation or organization)	**20-1574645** (I.R.S. employer identification no.)
Tango of Houston, Inc. (Exact name of obligor as specified in its charter)	
Delaware (State or other jurisdiction of incorporation or organization)	**20-1574628** (I.R.S. employer identification no.)
Tango of Minnesota, Inc. (Exact name of obligor as specified in its charter)	
Delaware (State or other jurisdiction of incorporation or organization)	**20-1210011** (I.R.S. employer identification no.)

Tango of North Carolina, Inc.
(Exact name of obligor as specified in its charter)

Delaware	**20-1209953**
(State or other jurisdiction of incorporation or organization)	(I.R.S. employer identification no.)

Tango of Sugarloaf, Inc.
(Exact name of obligor as specified in its charter)

Delaware	**20-1657553**
(State or other jurisdiction of incorporation or organization)	(I.R.S. employer identification no.)

Tango of Tennessee, Inc.
(Exact name of obligor as specified in its charter)

Delaware	**20-1209923**
(State or other jurisdiction of incorporation or organization)	(I.R.S. employer identification no.)

Tango of Westbury, Inc.
(Exact name of obligor as specified in its charter)

Delaware	**20-1574610**
(State or other jurisdiction of incorporation or organization)	(I.R.S. employer identification no.)

2481 Mañana Drive **Dallas, Texas** (Address of principal executive offices)	**75220** (Zip code)

$11^{1}/_{4}$% Senior Notes due 2014
(Title of the indenture securities)

1. General information. Furnish the following information as to the trustee:

(a) Name and address of each examining or supervising authority to which it is subject.

Name	Address
Comptroller of the Currency United States Department of the Treasury	Washington, D.C. 20219
Federal Reserve Bank	San Francisco, California 94105
Federal Deposit Insurance Corporation	Washington, D.C. 20429

(b) Whether it is authorized to exercise corporate trust powers.

Yes.

2. Affiliations with Obligor.

If the obligor is an affiliate of the trustee, describe each such affiliation.

None.

16. List of Exhibits.

Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as an exhibit hereto, pursuant to Rule 7a-29 under the Trust Indenture Act of 1939 (the "Act") and 17 C.F.R. 229.10(d).

1. A copy of the articles of association of The Bank of New York Trust Company, N.A. (Exhibit 1 to Form T-1 filed with Registration Statement No. 333-121948).

2. A copy of certificate of authority of the trustee to commence business. (Exhibit 2 to Form T-1 filed with Registration Statement No. 333-121948).

3. A copy of the authorization of the trustee to exercise corporate trust powers. (Exhibit 3 to Form T-1 filed with Registration Statement No. 333-121948).

4. A copy of the existing by-laws of the trustee. (Exhibit 4 to Form T-1 filed with Registration Statement No. 333-121948).

6. The consent of the trustee required by Section 321(b) of the Act. (Exhibit 6 to Form T-1 filed with Registration Statement No. 333-121948).

7. A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.

SIGNATURE

Pursuant to the requirements of the Act, the trustee, The Bank of New York Trust Company, N.A., a banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in The City of Dallas, and State of Texas, on the 18th day of July, 2006.

THE BANK OF NEW YORK TRUST COMPANY, N.A.

By: /s/ KATHY MCQUISTON

Name: KATHY MCQUISTON
Title: VICE PRESIDENT

EXHIBIT 7

Consolidated Report of Condition of
THE BANK OF NEW YORK TRUST COMPANY, N.A.
of 700 South Flower Street, Suite 200, Los Angeles, CA 90017

At the close of business March 31, 2006, published in accordance with Federal regulatory authority instructions.

	Dollar Amounts in Thousands
ASSETS	
Cash and balances due from depository institutions:	
Noninterest-bearing balances and currency and coin	3,453
Interest-bearing balances	0
Securities:	
Held-to-maturity securities	63
Available-for-sale securities	62,137
Federal funds sold and securities purchased under agreements to resell:	
Federal funds sold	40,800
Securities purchased under agreements to resell	115,000
Loans and lease financing receivables:	
Loans and leases held for sale	0
Loans and leases, net of unearned income	0
LESS: Allowance for loan and lease losses	0
Loans and leases, net of unearned income and allowance	0
Trading assets	0
Premises and fixed assets (including capitalized leases)	4,043
Other real estate owned	0
Investments in unconsolidated subsidiaries and associated companies	0
Not applicable	
Intangible assets:	
Goodwill	265,964
Other Intangible Assets	15,721
Other assets	37,548
Total assets	$ 544,729
LIABILITIES	
Deposits:	
In domestic offices	1,891
Noninterest-bearing	1,891
Interest-bearing	0
Not applicable	
Federal funds purchased and securities sold under agreements to repurchase:	
Federal funds purchased	0
Securities sold under agreements to repurchase	0
Trading liabilities	0
Other borrowed money: (includes mortgage indebtedness and obligations under capitalized leases)	58,000
Not applicable	

Not applicable	
Subordinated notes and debentures	0
Other liabilities	73,236
Total liabilities	133,127
Minority interest in consolidated subsidiaries	0
EQUITY CAPITAL	
Perpetual preferred stock and related surplus	0
Common stock	1,000
Surplus (exclude all surplus related to preferred stock)	321,520
Retained earnings	89,351
Accumulated other comprehensive income	(269)
Other equity capital components	0
Total equity capital	411,602
Total liabilities, minority interest, and equity capital (sum of items 21, 22, and 28)	544,729

I, William J. Winkelmann, Vice President of the above-named bank do hereby declare that the Reports of Condition and Income (including the supporting schedules) for this report date have been prepared in conformance with the instructions issued by the appropriate Federal regulatory authority and are true to the best of my knowledge and belief.

William J. Winkelmann) Vice President

We, the undersigned directors (trustees), attest to the correctness of the Report of Condition (including the supporting schedules) for this report date and declare that it has been examined by us and to the best of our knowledge and belief has been prepared in conformance with the instructions issued by the appropriate Federal regulatory authority and is true and correct.

Michael K. Klugman, President)
Michael F. McFadden, MD) Directors (Trustees)
Frank P. Sulzberger, Vice President)

Exhibit 99.1

LETTER OF TRANSMITTAL

Offer to Exchange its
$11^{1}/_{4}$% Senior Notes due 2014
Which Have Been Registered under the Securities Act of 1933
for Any and All Outstanding
$11^{1}/_{4}$% Senior Notes Due 2014
Pursuant to the Prospectus dated , 2006

DAVE & BUSTER'S, INC.

THE EXCHANGE OFFER WILL EXPIRE AT 5:00 P.M., NEW YORK CITY TIME, ON , 2006, UNLESS EXTENDED (THE "EXPIRATION DATE"). TENDERS MAY BE WITHDRAWN AT ANY TIME PRIOR TO THE EXPIRATION DATE.

The Exchange Agent for the Exchange Offer is:

The Bank of New York Trust Company, N.A.

By Registered or Certified Mail:	*By Regular Mail or Overnight Carrier:*	*In Person By Hand Only:*
		Bank of New York Trust Company, N.A.
c/o The Bank of New York 101 Barclay Street, 7 East New York, New York 10286 Attention: Evangeline Gonzales Corporate Trust Operations	*c/o* The Bank of New York 101 Barclay Street, 7 East New York, New York 10286 Attention: Evangeline Gonzales Corporate Trust Operations	*c/o* The Bank of New York 101 Barclay Street, 7 East New York, New York 10286 Attention: Evangeline Gonzales Corporate Trust Operations

By Facsimile:	*To Confirm by Telephone or For Information Call:*
212-298-1915	Evangeline Gonzales at 212-815-3738

DELIVERY OF THIS LETTER OF TRANSMITTAL TO AN ADDRESS OTHER THAN AS SET FORTH ABOVE OR TRANSMISSIONS OF INSTRUCTIONS VIA FACSIMILE TRANSMISSION TO A NUMBER OTHER THAN AS SET FORTH ABOVE WILL NOT CONSTITUTE A VALID DELIVERY TO THE EXCHANGE AGENT. YOU MUST SIGN THIS LETTER OF TRANSMITTAL IN THE APPROPRIATE SPACE THEREFOR PROVIDED BELOW AND COMPLETE THE SUBSTITUTE FORM W-9 SET FORTH BELOW. PLEASE READ THE ACCOMPANYING INSTRUCTIONS CAREFULLY.

The undersigned hereby acknowledges receipt of the prospectus, dated , 2006, of Dave & Buster's, Inc., which, together with this letter of transmittal, constitute the Company's offer to exchange $1,000 principal amount of its $11^{1}/_{4}$% Senior Notes due 2014, which have been registered under the Securities Act of 1933, for each $1,000 principal amount of its outstanding $11^{1}/_{4}$% Senior Notes due 2014, of which $175,000,000 aggregate principal amount is outstanding.

IF YOU DESIRE TO EXCHANGE YOUR RESTRICTED NOTES FOR AN EQUAL AGGREGATE PRINCIPAL AMOUNT OF EXCHANGE NOTES, YOU MUST VALIDLY TENDER (AND NOT VALIDLY WITHDRAW) YOUR NOTES TO THE EXCHANGE AGENT PRIOR TO THE EXPIRATION DATE.

Capitalized terms used but not defined herein shall have the same meaning given them in the Prospectus (as defined below).

This Letter of Transmittal is to be used by holders of Restricted Notes (as defined below) either if Restricted Notes are to be forwarded herewith or, unless an Agent's Message (as defined below) is utilized, tenders of Restricted Notes are to be made by book-entry transfer to an account maintained by The Bank of New York Trust Company, N.A. (the "Exchange Agent") at The Depository Trust Company ("DTC") pursuant to the procedures set forth in "The Exchange Offer—Procedures for Tendering Restricted Notes" in the Prospectus.

Holders of Restricted Notes whose certificates (the "Certificates") for such Restricted Notes are not immediately available or who cannot deliver their Certificates, this Letter of Transmittal and all other required documents to the Exchange Agent on or prior to the Expiration Date or who cannot complete the procedures for book-entry transfer on a timely basis, may tender their Restricted Notes according to the guaranteed delivery procedures set forth in "The Exchange Offer—Procedures for Tendering Restricted Notes" in the Prospectus.

DELIVERY OF DOCUMENTS TO DTC DOES NOT CONSTITUTE DELIVERY TO THE EXCHANGE AGENT.

NOTE: SIGNATURES MUST BE PROVIDED BELOW
PLEASE READ THE ACCOMPANYING INSTRUCTIONS CAREFULLY

The instructions included with this Letter of Transmittal must be followed. Questions and requests for assistance or for additional copies of the Prospectus and this Letter of Transmittal, the Notice of Guaranteed Delivery and related documents may be directed to The Bank of New York Trust Company, N.A., at the addresses and telephone numbers set forth on the cover page of this Letter of Transmittal. See instruction 8 below.

List below the Restricted Notes of which you are a holder. If the space provided below is inadequate, list the certificate numbers and principal amount on a separate signed schedule and attach that schedule to this Letter of Transmittal. See Instruction 3.

All Tendering Holders Complete this Box:

DESCRIPTION OF RESTRICTED NOTES SURRENDERED

	Restricted Notes Surrendered (attach additional schedule if necessary)		
Name(s) and address(es) of registered holder(s) (Please fill in, if blank)	**Certificate Number(s)***	**Aggregate Principal Amount**	**Principal Amount Tendered****
		$	**$**
	Total Amount Tendered:	**$**	**$**

* Need not be completed by book-entry holders. Such holders should check appropriate box below and provide the requested information.

** Need not be completed if tendering for exchange of all Restricted Notes held. Restricted Notes may be tendered in whole or in part in integral multiples of $1,000. All Restricted Notes held shall be deemed tendered unless a lesser number is specified in this column. See Instruction 4.

**(BOXES BELOW TO BE CHECKED BY ELIGIBLE INSTITUTIONS ONLY.
SEE INSTRUCTION 1)**

METHOD OF DELIVERY

o **CHECK HERE IF SURRENDERED RESTRICTED NOTES ARE BEING DELIVERED BY BOOK-ENTRY TRANSFER MADE TO THE ACCOUNT MAINTAINED BY THE EXCHANGE AGENT WITH THE BOOK-ENTRY TRANSFER FACILITY AND COMPLETE THE FOLLOWING:**

Name of Surrendering Participant: _____

DTC Account Number: _____

Transaction Code Number: _____

o **CHECK HERE AND ENCLOSE A PHOTOCOPY OF THE NOTICE OF GUARANTEED DELIVERY IF TENDERED RESTRICTED NOTES ARE BEING DELIVERED PURSUANT TO A NOTICE OF GUARANTEED DELIVERY PREVIOUSLY SENT TO THE EXCHANGE AGENT AND COMPLETE THE FOLLOWING:**

Name(s) of Registered Holder(s): _____

Window Ticket Number (if any): _____

Date of Notice of Guaranteed Delivery: _____

Institution Which Guaranteed Delivery: _____

If Guaranteed Delivery is to be made by book-entry transfer: _____

Name of Tendering Institution: _____

DTC Account Number: _____

Transaction Code Number: _____

o **CHECK HERE IF YOU ARE A BROKER-DEALER WHO ACQUIRED RESTRICTED NOTES FOR YOUR OWN ACCOUNT AS A RESULT OF MARKET-MAKING OR OTHER TRADING ACTIVITIES AND WISH TO RECEIVE TEN ADDITIONAL COPIES OF THE PROSPECTUS AND TEN COPIES OF ANY AMENDMENTS OR SUPPLEMENTS THERETO.**

Name: _____

Address: _____

Telephone Number and Contact Person: _____

NOTE: SIGNATURES MUST BE PROVIDED BELOW
PLEASE READ THE ACCOMPANYING INSTRUCTIONS CAREFULLY

Ladies and Gentlemen:

The undersigned hereby tenders to Dave & Buster's, Inc. (the "Company"), the above-described principal amount of the Company's outstanding $11^{1}/_{4}$% Senior Notes due 2014 (the "Restricted Notes"), in exchange for a like principal amount of the Company's $11^{1}/_{4}$% Senior Notes due 2014 (the "Exchange Notes"), which have been registered under the Securities Act of 1933 (the "Securities Act"), upon the terms and subject to the conditions set forth in the prospectus dated , 2006 (as the same may be amended or supplemented from time to time, the "Prospectus"), receipt of which is hereby acknowledged, and in this Letter of Transmittal (which, together with the Prospectus, constitute the "Exchange Offer").

Subject to and effective upon the acceptance for exchange of all or any portion of the Restricted Notes tendered herewith in accordance with the terms and conditions of the Exchange Offer (including, if the Exchange Offer is extended or amended, the terms and conditions of any such extension or amendment), the undersigned hereby sells, assigns and transfers to or upon the order of the Company all right, title and interest in and to such Restricted Notes as are being tendered herewith. The undersigned hereby irrevocably constitutes and appoints the Exchange Agent as its agent and attorney-in-fact (with full knowledge that the Exchange Agent is also acting as agent of the Company in connection with the Exchange Offer and as Trustee under the Indenture for the Restricted Notes and the Exchange Notes) with respect to the tendered Restricted Notes, with full power of substitution and re-substitution (such power of attorney being an irrevocable power coupled with an interest), subject only to the right of withdrawal described in the Prospectus, to: (i) deliver Certificates for Restricted Notes to the Company together with all accompanying evidences of transfer and authenticity to, or upon the order of, the Company upon receipt by the Exchange Agent, as the undersigned's agent, of the Exchange Notes to be issued in exchange for such Restricted Notes; (ii) present Certificates for such Restricted Notes for transfer, and to transfer such Restricted Notes on the account books maintained by DTC or any other relevant securities register; and (iii) receive for the account of the Company all benefits and otherwise exercise all rights of beneficial ownership of such Restricted Notes, all in accordance with the terms and conditions of the Exchange Offer.

The undersigned represents and warrants that the undersigned (i) owns the Restricted Notes tendered and is entitled to tender such Restricted Notes and (ii) has full authority to tender, exchange, sell, assign and transfer the Restricted Notes tendered hereby and that, when the same are accepted for exchange, the Company will acquire good, marketable and unencumbered title thereto, free and clear of all liens, restrictions, charges and encumbrances, and that the Restricted Notes tendered hereby are not subject to any adverse claims or rights, restrictions or proxies of any kind. The undersigned also represents and warrants that it will, upon request, execute and deliver any additional documents deemed by the Company or the Exchange Agent to be necessary or desirable to complete the exchange, sale, assignment and transfer of the Restricted Notes tendered hereby or to transfer ownership of such Restricted Notes on the account books maintained by DTC. The undersigned has read and agrees to all of the terms of the Exchange Offer.

The name(s) and address(es) of the registered holder(s) of the Restricted Notes tendered hereby are printed above, if they are not already set forth above, as they appear on the Certificates representing such Restricted Notes. The Certificate number(s) and amount of Restricted Notes that the undersigned wishes to tender are indicated in the appropriate boxes above.

If any tendered Restricted Notes are not exchanged pursuant to the Exchange Offer for any reason, or if Certificates are submitted for more Restricted Notes than are tendered or accepted for exchange, the undersigned understands that Certificates for such unexchanged or untendered Restricted Notes will be returned (or, in the case of Restricted Notes tendered by book-entry transfer, such Restricted Notes will be credited to an account maintained at DTC), without expense to the tendering holder, promptly following the expiration or termination of the Exchange Offer.

The undersigned understands that tenders of Restricted Notes pursuant to any one of the procedures described in "The Exchange Offer—Procedures for Tendering Restricted Notes" in the Prospectus and in the Instructions herein will, upon the Company's acceptance for exchange of such tendered Restricted Notes, constitute a binding agreement between the undersigned and the Company upon the terms and subject to the conditions of the Exchange Offer. The undersigned recognizes that, under certain circumstances set forth in the Prospectus, the Company may not be required to accept for exchange any of the Restricted Notes tendered hereby.

Unless otherwise indicated herein in the box entitled "Special Issuance Instructions" below, the undersigned hereby directs that the Exchange Notes be issued in the name(s) of the undersigned or, in the case of a book-entry transfer of Restricted Notes, be credited to the account at DTC indicated above in the box entitled "Description of Restricted Notes Surrendered." If applicable, substitute Certificates representing Restricted Notes not exchanged or not accepted for exchange are to be issued to the undersigned or, in the case of a book-entry transfer of Restricted Notes, are to be credited to the account at DTC indicated above. Similarly, unless otherwise indicated under "Special Delivery Instructions," please deliver Exchange Notes to the undersigned at the address shown below the undersigned's signature.

By tendering Restricted Notes and executing this Letter of Transmittal, the undersigned hereby represents and agrees that: (i) the undersigned is not an "affiliate" of the Company within the meaning of Rule 405 under the Securities Act; (ii) any Exchange Notes to be received by the undersigned are being acquired in the ordinary course of its business; (iii) the undersigned is not participating in, and has no arrangement or understanding with any person to participate in, the distribution (within the meaning of the Securities Act) of Exchange Notes to be received in the Exchange Offer; (iv) if the undersigned is a resident of the State of California, it falls under the self-executing institutional investor exemption set forth under Section 25102(i) of the Corporate Securities Law of 1968 and Rules 260.102.10 and 260.105.14 of the California Blue Sky Regulations; (v) if the undersigned is a resident of the Commonwealth of Pennsylvania, it falls under the self-executing institutional investor exemption set forth under Sections 203(c), 102(d) and (k) of the Pennsylvania Securities Act of 1972, Section 102.111 of the Pennsylvania Blue Sky Regulations and an interpretive opinion dated November 16, 1985; (vi) the undersigned acknowledges and agrees that any person who is a broker-dealer registered under the Securities Exchange Act of 1934 or is participating in the exchange offer for the purpose of distributing the Exchange Notes, must comply with the registration and delivery requirements of the Securities Act in connection with a secondary resale transaction of the Exchange Notes or interests therein acquired by such person and cannot rely on the position of the staff of the Securities and Exchange Commission set forth in certain no-action letters; (vii) the undersigned understands that a secondary resale transaction described in clause (vi) above and any resales of Exchange Notes or interests therein obtained by such holder in exchange for Restricted Notes or interests therein originally acquired by such holder directly from the Company should be covered by an effective registration statement containing the selling security holder information required by Item 507 or Item 508, as applicable, of Regulation S-K under the Securities Act; and (viii) the undersigned is not acting on behalf of any person or entity who could not truthfully make the foregoing representations. If the undersigned is not a broker-dealer, the undersigned represents that it is not engaged in, and does not intend to engage in, a distribution of Exchange Notes.

If the undersigned is a broker-dealer, by tendering Restricted Notes and executing this Letter of Transmittal, the undersigned represents and agrees that such Restricted Notes were acquired by such broker-dealer for its own account as a result of market-making activities or other trading activities and it will deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of Exchange Notes; however, by so acknowledging and by delivering a prospectus, the undersigned will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act. The Company has agreed that it will make the Prospectus available to any participating broker-dealer in connection with any such resale until the earlier of (i) 180 days from the date on which the registration statement of which the Prospectus is a part is declared effective and (ii) the date on which a broker-dealer is no longer required to deliver a Prospectus.

All authority herein conferred or agreed to be conferred in this Letter of Transmittal shall survive the death or incapacity of the undersigned and any obligation of the undersigned hereunder shall be binding upon the heirs, executors, administrators, personal representatives, trustees in bankruptcy, legal representatives, successors and assigns of the undersigned. Except as stated in the Prospectus and in the Instructions contained in this Letter of Transmittal, this tender is irrevocable.

Tendered Restricted Notes may be withdrawn at any time prior to 5:00 p.m., New York City Time on , 2006 or on such later date or time to which the Company may extend the Exchange Offer.

PLEASE SIGN HERE
(TO BE COMPLETED BY ALL TENDERING HOLDERS)
(Complete accompanying Substitute Form W-9)

Signature(s) of Owner(s)

Dated:

This Letter of Transmittal must be signed by the registered holder(s) exactly as their name(s) appear(s) on the Certificate(s) for the Restricted Notes, or by person(s) authorized to become registered holder(s) by a properly completed bond power from the registered holder(s), a copy of which must be transmitted with this Letter of Transmittal. If Restricted Notes to which this Letter of Transmittal relate are held of record by two or more joint holders, then all such holders must sign this. If signature is by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or other person acting in a fiduciary or representative capacity, then please set forth full title. See Instructions 2 and 5.

Name(s):

(Please Type or Print)

Capacity (full title):

Address:

(Include Zip Code)

Area Code and Tel. No.:

Taxpayer Identification or Social Security Number:

Signature(s) Guaranteed by:
(If Required—See Instructions 2 and 5)

Authorized Signature:

Name of Firm:

Address and Tel. No.:

Dated:

Medallion Guarantee:

SPECIAL ISSUANCE INSTRUCTIONS
(See Instructions 2, 5 and 6)

To be completed ONLY if Certificates for Restricted Notes not exchanged and/or Exchange Notes are to be issued in the name of and sent to someone other than the person whose signature(s) appear(s) on this Letter of Transmittal above.

Issue Exchange Notes and/or Restricted Notes to:

Name: _____

(Please type or print)

Address: _____

_____

(zip code)

Telephone Number: _____

Taxpayer Identification Number or Social Security Number: _____

(Complete Substitute Form W-9)

SPECIAL DELIVERY INSTRUCTIONS
(See Instructions 2, 5 and 6)

To be completed ONLY if Certificates for Restricted Notes not exchanged and/or Exchange Notes are to be sent to someone other than the person or persons whose signature(s) appear(s) on this Letter of Transmittal above or to such person or persons at an address other than shown in the box above entitled "Description of Restricted Notes Surrendered."

Deliver Exchange Notes and/or Restricted Notes to:

Name: _____

(Please type or print)

Address: _____

_____

(zip code)

Telephone Number: _____

Taxpayer Identification Number or Social Security Number: _____

IMPORTANT: UNLESS GUARANTEED DELIVERY PROCEDURES ARE COMPLIED WITH, THIS LETTER OF TRANSMITTAL OR A FACSIMILE HEREOF (TOGETHER WITH THE CERTIFICATE(S) FOR RESTRICTED NOTES AND ANY OTHER DOCUMENTS REQUIRED) MUST BE RECEIVED BY THE EXCHANGE AGENT PRIOR TO 5:00 P.M., NEW YORK CITY TIME, ON THE EXPIRATION DATE.

INSTRUCTIONS

1. Delivery of Letter of Transmittal and Certificates; Guaranteed Delivery Procedures.

A holder of Restricted Notes may tender the same by (i) properly completing and signing this Letter of Transmittal or a facsimile hereof (all references in the Prospectus to the Letter of Transmittal shall be deemed to include a facsimile thereof) and delivering the same, together with the certificate or certificates, if applicable, representing the Restricted Notes being tendered, and any required signature guarantees and any other documents required by this Letter of Transmittal, to the Exchange Agent at its address set forth above on or prior to the Expiration Date, or (ii) complying with the procedure for book-entry transfer described below, or (iii) complying with the guaranteed delivery procedures described below.

Holders of Restricted Notes may tender their Restricted Notes by book-entry transfer by crediting the Restricted Notes to the Exchange Agent's account at DTC in accordance with DTC's Automated Tender Offer Program ("ATOP") and by complying with applicable ATOP procedures with respect to the Exchange Offer. DTC participants that are accepting the Exchange Offer should transmit their acceptance to DTC, which will edit and verify the acceptance and execute a book-entry delivery to the Exchange Agent's account at DTC. DTC will then send an Agent's Message to the Exchange Agent for its acceptance in which the holder of the Restricted Notes acknowledges and agrees to be bound by the terms of, and makes the representations and warranties contained in, this Letter of Transmittal. Delivery of the Agent's Message by DTC will satisfy the terms of the Exchange Offer as to execution and delivery of a Letter of Transmittal by the participant identified in the Agent's Message. DTC participants may also accept the Exchange Offer by submitting a Notice of Guaranteed Delivery through ATOP.

The term "Agent's Message" means a message, transmitted by DTC and received by the Exchange Agent and forming a part of a book-entry confirmation, which states that DTC has received an express acknowledgement from the tendering participant that such participant has received and agrees to be bound by the Letter of Transmittal and that the Company may enforce the Letter of Transmittal against such participant. The term "book-entry confirmation" means a timely confirmation of book-entry transfer of Restricted Notes into the Exchange Agent's account at DTC. Restricted Notes may be tendered in whole or in part in integral multiples of $1,000 principal amount.

Holders who wish to tender their Restricted Notes and: (i) whose Certificates for such Restricted Notes are not immediately available; (ii) who cannot deliver their Certificates, this Letter of Transmittal and all other required documents to the Exchange Agent prior to the Expiration Date; or (iii) who cannot complete the procedures for delivery by book-entry transfer on a timely basis, may tender their Restricted Notes by properly completing and duly executing a Notice of Guaranteed Delivery pursuant to the guaranteed delivery procedures set forth in "The Exchange Offer—Procedures for Tendering Restricted Notes" in the Prospectus. Pursuant to such procedures: (i) such tender must be made by or through an Eligible Institution (as defined below); (ii) a properly completed and duly executed Notice of Guaranteed Delivery, substantially in the form accompanying this Letter of Transmittal, must be received by the Exchange Agent prior to the Expiration Date; and (iii) the Certificates (or a book-entry confirmation) representing all tendered Restricted Notes, in proper form for transfer, together with a Letter of Transmittal (or facsimile thereof), properly completed and duly executed, with any required signature guarantees, or an Agent's Message, in the case of a book-entry transfer, and any other documents required by this Letter of Transmittal, must be received by the Exchange Agent within three New York Stock Exchange trading days after the date of execution of such Notice of Guaranteed Delivery, all as provided in "The Exchange Offer—Procedures for Tendering Restricted Notes" in the Prospectus.

The Notice of Guaranteed Delivery may be delivered by hand or transmitted by facsimile or mail to the Exchange Agent, and must include a guarantee by an Eligible Institution in the form set forth in the Notice of Guaranteed Delivery. Any Letter of Transmittal sent by facsimile must be promptly followed by delivery of the original Letter of Transmittal to the Exchange Agent at one of the addresses set forth on the cover page of this Letter of Transmittal. For Restricted Notes to be properly

tendered pursuant to the guaranteed delivery procedure, the Exchange Agent must receive a Notice of Guaranteed Delivery on or prior to the Expiration Date. As used herein and in the Prospectus, "Eligible Institution" means a firm or other entity identified in Rule 17Ad-15 under the Exchange Act as "an eligible guarantor institution," including (as such terms are defined therein): (i) a bank; (ii) a broker, dealer, municipal securities broker or dealer or government securities broker or dealer; (iii) a credit union; (iv) a national securities exchange, registered securities association or clearing agency; or (v) a savings association.

The method of delivery of Certificates for Restricted Notes, this Letter of Transmittal and all other required documents is at the option and sole risk of the tendering holder, and delivery will be deemed made only when actually received by the Exchange Agent. Instead of delivery by mail, it is recommended that holders use an overnight or hand delivery service. In all cases, sufficient time should be allowed to assure timely delivery to the Exchange Agent and proper insurance should be obtained. No Letter of Transmittal or Certificates for Restricted Notes should be sent to the Company. Holders may request their respective brokers, dealers, commercial banks, trust companies or nominees to effect these transactions for such holders.

The Company will not accept any alternative, conditional or contingent tenders. Each tendering holder, by execution of a Letter of Transmittal (or facsimile thereof), waives any right to receive any notice of the acceptance of such tender.

2. Guarantee of Signatures.

No signature guarantee on this Letter of Transmittal is required if: (i) this Letter of Transmittal is signed by the registered holder (which shall include any participant in DTC whose name appears on a security position listing as the owner of the Restricted Notes) of Restricted Notes tendered herewith, unless such holder has completed either the box entitled "Special Issuance Instructions" or the box entitled "Special Delivery Instructions" above; or (ii) such Restricted Notes are tendered for the account of a firm that is an Eligible Institution. In all other cases, an Eligible Institution must guarantee the signature(s) on this Letter of Transmittal. See Instruction 5.

3. Inadequate Space.

If the space provided in the box captioned "Description of Restricted Notes Surrendered" is inadequate, the Certificate number(s) and/or the principal amount of Restricted Notes and any other required information should be listed on a separate signed schedule and attached to this Letter of Transmittal.

4. Partial Tenders and Withdrawal Rights.

Tenders of Restricted Notes will be accepted only in integral multiples of $1,000 stated principal amount. If less than all the Restricted Notes evidenced by any Certificate submitted are to be tendered, fill in the principal amount of Restricted Notes which are to be tendered in the "Principal Amount Tendered" column in the box entitled "Description of Restricted Notes Tendered." In such case, new Certificate(s) for the remainder of the Restricted Notes that were evidenced by the old Certificate(s) will be sent to the tendering holder promptly after the Expiration Date. All Restricted Notes represented by Certificates delivered to the Exchange Agent will be deemed to have been tendered unless otherwise indicated.

Except as otherwise provided herein or in the Prospectus, tenders of Restricted Notes pursuant to the Exchange Offer may be withdrawn at any time prior to the Expiration Date. In order for a withdrawal to be effective, a written or facsimile transmission of such notice of withdrawal must be timely received by the Exchange Agent at its address set forth above prior to the Expiration Date. Any such notice of withdrawal must specify the name of the person who tendered the Restricted Notes to be withdrawn, the aggregate principal amount of Restricted Notes to be withdrawn and, if Certificates for such Restricted Notes have been tendered, the name of the registered holder of the Restricted Notes as set forth on the Certificate(s), if different from that of the person who tendered such Restricted Notes. If Certificates for Restricted Notes have been delivered or otherwise identified to the

Exchange Agent, the notice of withdrawal must specify the serial numbers on the particular Certificates for the Restricted Notes to be withdrawn and the signature on the notice of withdrawal must be guaranteed by an Eligible Institution, except in the case of Restricted Notes tendered for the account of an Eligible Institution. If Restricted Notes have been tendered pursuant to the procedures for book-entry transfer set forth in "The Exchange Offer—Procedures for Tendering Restricted Notes" in the Prospectus, the notice of withdrawal must specify the name and number of the account at DTC to be credited with the withdrawal of Restricted Notes and must otherwise comply with the procedures of DTC. Withdrawals of tenders of Restricted Notes may not be rescinded. Restricted Notes properly withdrawn will not be deemed validly tendered for purposes of the Exchange Offer, but may be retendered at any subsequent time prior to the Expiration Date by following any of the procedures set forth in "The Exchange Offer—Procedures for Tendering Restricted Notes" in the Prospectus.

All questions as to the validity, form and eligibility (including time of receipt) of such withdrawal notices will be determined by the Company, in its reasonable judgment, which determination shall be final and binding on all parties. None of the Company, any affiliates or assigns of the Company, the Exchange Agent or any other person shall be under any duty to give any notification of any defects or irregularities in any notice of withdrawal or incur any liability for failure to give any such notification. Any Restricted Notes which have been tendered but which are withdrawn will be returned to the holder thereof promptly after withdrawal.

5. Signatures on Letter of Transmittal and Endorsements.

If this Letter of Transmittal is signed by the registered holder(s) of the Restricted Notes tendered hereby, the signature(s) must correspond exactly with the name(s) as written on the face of the Certificate(s) or on a security position listing, without alteration, enlargement or any change whatsoever.

If any of the Restricted Notes tendered hereby are owned of record by two or more joint owners, all such owners must sign this Letter of Transmittal.

If any tendered Restricted Notes are registered in different names on several Certificates, it will be necessary to complete, sign and submit as many separate Letters of Transmittal (or facsimiles thereof or Agent's Messages in lieu thereof) as there are names in which Certificates are registered.

If this Letter of Transmittal or any Certificates or bond powers are signed by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations or others acting in a fiduciary or representative capacity, such persons should so indicate when signing and must submit proper evidence satisfactory to the Company, in its reasonable judgment, of such persons' authority to so act.

When this Letter of Transmittal is signed by the registered holder(s) of the Restricted Notes listed and transmitted hereby, no endorsement(s) of Certificate(s) or separate bond power(s) are required unless Exchange Notes are to be issued in the name of a person other than the registered holder(s). Signature(s) on such Certificate(s) or bond power(s) must be guaranteed by an Eligible Institution.

If this Letter of Transmittal is signed by a person other than the registered holder(s) of the Restricted Notes listed and transmitted hereby, the Certificate(s) must be endorsed or accompanied by appropriate bond power(s), signed exactly as the name(s) of the registered owner(s) appear(s) on the Certificate(s), and also must be accompanied by such opinions of counsel, certifications and other information as the Company or the Trustee for the Restricted Notes may require in accordance with the restrictions on transfer applicable to the Restricted Notes. Signature(s) on such Certificate(s) or bond power(s) must be guaranteed by an Eligible Institution.

6. Special Issuance or Delivery Instructions.

If Exchange Notes or Certificates for Restricted Notes not exchanged are to be issued in the name of a person other than the signer of this Letter of Transmittal, or are to be sent to someone other than the signer of this Letter of Transmittal or to an address other than that shown above, the appropriate boxes on this Letter of Transmittal should be completed. In the case of issuance in a different name, the taxpayer identification number of the person named must also be indicated. Holders tendering

Restricted Notes by book-entry transfer may request that Restricted Notes not exchanged be credited to such account maintained at DTC as such holder may designate. If no such instructions are given, Restricted Notes not exchanged will be returned by mail or, if tendered by book-entry transfer, by crediting the account indicated above maintained at DTC.

7. Irregularities.

The Company will determine, in its reasonable judgment, all questions as to the form of documents, validity, eligibility (including time of receipt) and acceptance for exchange of any tender of Restricted Notes, which determination shall be final and binding on all parties. The Company reserves the right, in its reasonable judgment, to reject any and all tenders determined by it not to be in proper form or the acceptance of which, or exchange for, may, in the view of counsel to the Company, be unlawful. The Company also reserves the right, subject to applicable law, to waive any of the conditions of the Exchange Offer set forth in "The Exchange Offer—Conditions to the Exchange Offer" in the Prospectus or any defect or irregularity in any tender of Restricted Notes of any particular holder whether or not similar defects or irregularities are waived in the case of other holders. The Company's interpretation of the terms and conditions of the Exchange Offer (including this Letter of Transmittal and the Instructions) will be final and binding. No tender of Restricted Notes will be deemed to have been validly made until all defects or irregularities with respect to such tender have been cured or waived. None of the Company, any affiliates or assigns of the Company, the Exchange Agent, or any other person shall be under any duty to give any notification of any defects or irregularities in tenders or incur any liability for failure to give any such notification.

8. Questions, Requests for Assistance and Additional Copies.

Questions and requests for assistance may be directed to the Exchange Agent at its address and telephone number set forth above. Additional copies of the Prospectus, this Letter of Transmittal and the Notice of Guaranteed Delivery may be obtained from the Exchange Agent or from your broker, dealer, commercial bank, trust company or other nominee.

9. Backup Withholding; Substitute Form W-9.

Under the federal income tax laws, payments that may be made by the Company on account of Exchange Notes may be subject to backup withholding at the rate of 28%. In order to avoid backup withholding, each tendering U.S. holder should complete and sign the Substitute Form W-9 included in this Letter of Transmittal and either (i) provide the correct taxpayer identification number ("TIN") and certify, under penalties of perjury, that the TIN provided is correct and that (a) the holder has not been notified by the Internal Revenue Service (the "IRS") that the holder is subject to backup withholding as a result of failure to report all interest or dividends or (b) the IRS has notified the holder that the holder is no longer subject to backup withholding; or (ii) provide an adequate basis for exemption. If the tendering holder has not been issued a TIN and has applied for one, or intends to apply for one in the near future, such holder should write "Applied For" in the space provided for the TIN in Part I of the Substitute Form W-9, sign and date the Substitute Form W-9 and sign the Certificate of Payee Awaiting Taxpayer Identification Number. If "Applied For" is written in Part I, the Company (or the paying agent under the Indenture governing the Exchange Notes) will retain a percentage (equal to the applicable backup withholding rate—28%) of payments made to the tendering holder during the 60-day period following the date of the Substitute Form W-9. If the holder furnishes the Exchange Agent or the Company with its TIN within 60-days after the date of the Substitute Form W-9, the Company (or the paying agent) will remit such amounts retained during the 60-day period to the holder and no further amounts will be retained or withheld from payments made to the holder thereafter. If, however, the holder does not provide the Exchange Agent or the Company with its TIN within such 60-day period, the Company (or the paying agent) will remit such previously retained amounts to the IRS as backup withholding and, until a correct TIN is provided, will backup withhold (at the applicable rate) on all payments made thereafter. In general, if a holder is an individual, the taxpayer identification number is that individual's Social Security Number. If the Exchange Agent or the Company is not provided with the correct taxpayer identification number, the holder may be subject to a $50 penalty imposed by the IRS. Certain holders (including, among others,

corporations and certain foreign persons) are not subject to these backup withholding and reporting requirements. In order for a foreign holder to qualify as an exempt recipient, such holder must submit to the Exchange Agent or the Company the appropriate IRS Form W-8 (and not the Substitute Form W-9), signed under penalties of perjury, attesting to that individual's exempt status. Such forms can be obtained from the Exchange Agent upon request. For further information concerning backup withholding and instructions for completing the Substitute Form W-9 (including how to obtain a taxpayer identification number if you do not have one and how to complete the Substitute Form W-9 if Restricted Notes are registered in more than one name), consult the guidelines included in the Request for Taxpayer Identification Number and Certification on Form W-9. You may obtain a copy of this document at the IRS' website at www.irs.gov.

Failure to complete the Substitute Form W-9 will not, by itself, cause Restricted Notes to be deemed invalidly tendered, but may require the Company (or the paying agent) to withhold (at the applicable 28% rate) from any payments made on account of the Exchange Notes. Backup withholding is not an additional federal income tax. Rather, the federal income tax liability of a person subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund may be obtained.

10. Mutilated, Lost, Destroyed or Stolen Certificates.

If any Certificate(s) representing Restricted Notes has been mutilated, lost, destroyed or stolen, the holder should promptly notify the Exchange Agent. The holder will then be instructed as to the steps that must be taken in order to replace the Certificate(s). This Letter of Transmittal and related documents cannot be processed until the procedures for replacing mutilated, lost, destroyed or stolen Certificate(s) have been followed.

11. Security Transfer Taxes.

Holders who tender their Restricted Notes for exchange will not be obligated to pay any transfer taxes in connection therewith, except that if Exchange Notes are to be delivered to, or are to be issued in the name of, any person other than the registered holder of the Restricted Notes tendered, or if a transfer tax is imposed for any reason other than the exchange of Restricted Notes in connection with the Exchange Offer, then the amount of any such transfer tax (whether imposed on the registered holder or any other persons) will be payable by the tendering holder. If satisfactory evidence of payment of such transfer tax or exemption therefrom is not submitted with the Letter of Transmittal, the amount of such transfer tax will be billed directly to such tendering holder.

IMPORTANT: THIS LETTER OF TRANSMITTAL (OR A FACSIMILE THEREOF), TOGETHER WITH CERTIFICATES REPRESENTING TENDERED RESTRICTED NOTES OR A BOOK ENTRY CONFIRMATION AND ALL OTHER REQUIRED DOCUMENTS, MUST BE RECEIVED BY THE EXCHANGE AGENT PRIOR TO 5.00 P.M., NEW YORK CITY TIME, ON THE EXPIRATION DATE.

IF FURTHER INSTRUCTIONS ARE NECESSARY, CONTACT THE EXCHANGE AGENT AT 212-815-3738.

TO BE COMPLETED BY ALL SURRENDERING REGISTERED HOLDERS (SEE INSTRUCTION 9)

PAYOR'S NAME:

SUBSTITUTE
FORM W-9
Department of the Treasury,
Internal Revenue Service

Payor's Request for Taxpayer Identification Number ("TIN") and Certification

Part 1—Please provide your TIN in the box at right and certify by signing and dating below.

TIN

(Social Security Number or Employer ID Number)

Part 2—For Payees exempt from backup withholding (See instructions below)

Part 3—Certifications—Under penalties of perjury, I certify that:

(1) the number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me) and

(2) I am not subject to backup withholding either because: (a) I am exempt from backup withholding; or (b) I have not been notified by the Internal Revenue Service (the "IRS") that I am subject to backup withholding as a result of failure to report all interest or dividends; or (c) the IRS has notified me that I am no longer subject to backup withholding.

(3) I am a U.S. person.

Signature: Date:

You must cross out item (2) above if you have been notified by the IRS that you are subject to backup withholding because of underreporting interest or dividends on your tax return. However, if, after being notified by the IRS that you were subject to backup withholding, you received another notification from the IRS that you were no longer subject to backup withholding, do not cross out item (2) (also see instructions in the enclosed Guidelines).

YOU MUST COMPLETE THE FOLLOWING CERTIFICATE IF YOU WROTE "APPLIED FOR" IN PART 1 OF SUBSTITUTE FORM W-9.

CERTIFICATE OF AWAITING TAXPAYER IDENTIFICATION NUMBER

I certify under penalties of perjury that a taxpayer identification number has not been issued to me, and either (1) I have mailed or delivered an application to receive a taxpayer identification number to the appropriate Internal Revenue Service Center or Social Security Administration Office or (2) I intend to mail or deliver an application in the near future. I understand that if I do not provide a taxpayer identification number by the time of payment, 28% of all reportable payments made to me will be withheld, but that such amounts will be refunded to me if I then provide a Taxpayer Identification Number within 60 days.

Signature: Date:

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM MAY RESULT IN BACKUP WITHHOLDING OF 28% OF ANY PAYMENTS MADE TO YOU. PLEASE REVIEW THE ENCLOSED GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9 FOR ADDITIONAL DETAILS.

FACSIMILE COPIES OF THE LETTER OF TRANSMITTAL, PROPERLY COMPLETED AND DULY EXECUTED, WILL BE ACCEPTED. THE LETTER OF TRANSMITTAL, CERTIFICATES FOR RESTRICTED NOTES AND ANY OTHER REQUIRED DOCUMENTS SHOULD BE SENT OR DELIVERED BY EACH REGISTERED HOLDER OR HIS OR HER BROKER, DEALER, COMMERCIAL BANK, TRUST COMPANY OR OTHER NOMINEE TO THE EXCHANGE AGENT AT ONE OF ITS ADDRESSES SET FORTH BELOW.

The Exchange Agent is:

THE BANK OF NEW YORK TRUST COMPANY, N.A.

By Registered or Certified Mail:	*By Regular Mail or Overnight Carrier:*	*In Person By Hand Only:*
		Bank of New York Trust Company, N.A.
c/o The Bank of New York 101 Barclay Street, 7 East New York, New York 10286 Attention: Evangeline Gonzales Corporate Trust Operations	*c/o* The Bank of New York 101 Barclay Street, 7 East New York, New York 10286 Attention: Evangeline Gonzales Corporate Trust Operations	*c/o* The Bank of New York 101 Barclay Street, 7 East New York, New York 10286 Attention: Evangeline Gonzales Corporate Trust Operations

By Facsimile:	*To Confirm by Telephone or For Information Call:*
212-298-1915	*Evangeline Gonzales at 212-815-3738*

Questions and requests for assistance may be directed to the Exchange Agent at its address and telephone numbers listed above. Additional copies of this Letter of Transmittal and other documents may be obtained from the Exchange Agent, and will be furnished promptly at the Company's expense. You may also contact your broker, dealer, commercial bank, trust company or other nominee for assistance.

GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9

GUIDELINES FOR DETERMINING THE PROPER IDENTIFICATION NUMBER FOR THE PAYEE (YOU) TO GIVE THE PAYOR. Social security numbers have nine digits separated by two hyphens: *i.e.*, 000-00-0000. Employee identification numbers have nine digits separated by only one hyphen: *i.e.*, 00-0000000. The table below will help determine the number to give the Payor. All "Section" references are to the Internal Revenue Code of 1986, as amended. "IRS" is the Internal Revenue Service.

FOR THIS TYPE OF ACCOUNT:	GIVE THE SOCIAL SECURITY NUMBER OF—
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account(1)
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor(2)
4. a. The usual revocable savings trust account (grantor is also trustee)	The grantor-trustee(1)
b. So-called trust account that is not a legal or valid trust under state law	The actual owner(1)
5. Sole proprietorship or single-owner LLC	The owner(3)
FOR THIS TYPE OF ACCOUNT:	**GIVE THE EMPLOYER IDENTIFICATION NUMBER OF—**
6. Sole proprietorship or single-owner LLC	The owner(3)
7. A valid trust, estate, or pension trust	The legal entity(4)
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization account	The organization
10. Partnership	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

1. List first and circle the name of the person whose number you furnish. If only one person on a joint account has a social security number, that person's number must be furnished.

2. Circle the minor's name and furnish the minor's social security number.

3. You must show your individual name, but you may also enter your business or "doing business as" name. You may use either your social security number or your employer identification number (if you have one).

4. List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the taxpayer identification number of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

NOTE: IF NO NAME IS CIRCLED WHEN THERE IS MORE THAN ONE NAME, THE NUMBER WILL BE CONSIDERED TO BE THAT OF THE FIRST NAME LISTED.

GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9

OBTAINING A NUMBER

If you don't have a taxpayer identification number or you don't know your number, obtain Form SS-5, Application for a Social Security Card, at the local Social Security Administration office, or Form SS-4, Application for Employer Identification Number, by calling 1-800-TAX-FORM, and apply for a number.

PAYEES EXEMPT FROM BACKUP WITHHOLDING
PAYEES SPECIFICALLY EXEMPTED FROM WITHHOLDING INCLUDE:

- An organization exempt from tax under Section 501(a), an individual retirement account (IRA), or a custodial account under Section 403(b)(7), if the account satisfies the requirements of Section 401(f)(2).
- The United States or a state thereof, the District of Columbia, a possession of the United States, or a political subdivision or wholly-owned agency or instrumentality of any one or more of the foregoing.
- An international organization or any agency or instrumentality thereof.
- A foreign government and any political subdivision, agency or instrumentality thereof.

OTHER PAYEES THAT MAY BE EXEMPT FROM BACKUP WITHHOLDING
PAYEES THAT MAY BE EXEMPT FROM BACKUP WITHHOLDING INCLUDE:

- A corporation.
- A financial institution.
- A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States.
- A real estate investment trust.
- A common trust fund operated by a bank under Section 584(a).
- An entity registered at all times during the tax year under the Investment Company Act of 1940.
- A middleman known in the investment community as a nominee or custodian.
- A futures commission merchant registered with the Commodity Futures Trading Commission.
- A foreign central bank of issue.

PAYMENTS OF DIVIDENDS AND PATRONAGE DIVIDENDS GENERALLY EXEMPT FROM BACKUP WITHHOLDING INCLUDE:

- Payments to nonresident aliens subject to withholding under Section 1441.
- Payments to partnerships not engaged in a trade or business in the United States and that have at least one nonresident alien partner.
- Payments of patronage dividends not paid in money.
- Payments made by certain foreign organizations.
- Section 404(k) payments made by an ESOP.

PAYMENTS OF INTEREST GENERALLY EXEMPT FROM BACKUP WITHHOLDING INCLUDE:

- Payments of interest on obligations issued by individuals. NOTE: You may be subject to backup withholding if this interest is $600 or more and you have not provided your correct taxpayer identification number to the Payor.

- Payments of tax-exempt interest (including exempt-interest dividends under Section 852).
- Payments described in Section 6049(b)(5) to nonresident aliens.
- Payments on tax-free covenant bonds under Section 1451.
- Payments made by certain foreign organizations.
- Mortgage interest paid to you.

Certain payments, other than payments of interest, dividends, and patronage dividends, that are exempt from information reporting are also exempt from backup withholding. For details, see the regulations under sections 6041, 6041A, 6042, 6044, 6045, 6049, 6050A and 6050N.

EXEMPT PAYEES DESCRIBED ABOVE MUST FILE FORM W-9 OR A SUBSTITUTE FORM W-9 TO AVOID POSSIBLE ERRONEOUS BACKUP WITHHOLDING. FILE THIS FORM WITH THE PAYOR, FURNISH YOUR TAXPAYER IDENTIFICATION NUMBER, WRITE "EXEMPT" IN PART 2 OF THE FORM, AND RETURN IT TO THE PAYOR. IF THE PAYMENTS ARE OF INTEREST, DIVIDENDS, OR PATRONAGE DIVIDENDS, ALSO SIGN AND DATE THE FORM.

PRIVACY ACT NOTICE. Section 6109 requires you to provide your correct taxpayer identification number to payors, who must report the payments to the IRS. The IRS uses the number for identification purposes and may also provide this information to various government agencies for tax enforcement, other non-tax enforcement or litigation purposes. Payors must be given the numbers whether or not recipients are required to file tax returns. Payors must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not furnish a taxpayer identification number to a Payor. Certain penalties may also apply.

PENALTIES

(1) **FAILURE TO FURNISH TAXPAYER IDENTIFICATION NUMBER.** If you fail to furnish your taxpayer identification number to a Payor, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

(2) **CIVIL PENALTY FOR FALSE INFORMATION WITH RESPECT TO WITHHOLDING.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

(3) **CRIMINAL PENALTY FOR FALSIFYING INFORMATION.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

FOR ADDITIONAL INFORMATION CONTACT YOUR TAX CONSULTANT OR THE INTERNAL REVENUE SERVICE.

Exhibit 99.2

DAVE & BUSTER'S, INC.

Offer to Exchange its
$11^{1}/_{4}$% Senior Notes Due 2014
Which Have Been Registered Under the Securities Act of 1933
for Any and All Outstanding $11^{1}/_{4}$% Senior Notes Due 2014
Pursuant to the Prospectus dated , 2006

To: Brokers, Dealers, Commercial Banks,
Trust Companies and Other Nominees:

We are enclosing herewith the materials listed below relating to the offer by Dave & Buster's, Inc. (the "Company"), to exchange its $11^{1}/_{4}$% Senior Notes due 2014 (the "Exchange Notes"), which have been registered under the Securities Act of 1933 (the "Securities Act"), for its outstanding $11^{1}/_{4}$% Senior Notes due 2014 (the "Restricted Notes"), upon the terms and subject to the conditions set forth in the prospectus dated , 2006 (as amended or supplemented from time to time, the "Prospectus") of the Company and the related letter of transmittal (as amended or supplemented from time to time, the "Letter of Transmittal"), which together constitute the Company's offer (the "Exchange Offer").

Enclosed herewith are copies of the following documents:

1. The Prospectus;

2. Letter of Transmittal relating to the Restricted Notes for your use and for the information of your clients;

3. Notice of Guaranteed Delivery relating to the Restricted Notes to be used to accept the Exchange Offer if certificates for Restricted Notes are not immediately available or time will not permit all required documents to reach the Exchange Agent (as defined below) prior to the Expiration Date (as defined below) or if the procedure for book-entry transfer cannot be completed on a timely basis;

4. Letter that may be sent to your clients for whose account you hold Restricted Notes in your name or in the name of your nominee, to accompany the instructions referred to below, for obtaining the client's instructions with regard to the Exchange Offer; and

5. Instructions to Registered Holder from Beneficial Owner.

To participate in the Exchange Offer, a beneficial holder must either:

- cause to be delivered to The Bank of New York Trust Company, N.A. (the "Exchange Agent"), at the address set forth in the Letter of Transmittal, definitive certificated notes representing Restricted Notes in proper form for transfer together with a duly executed and properly completed Letter of Transmittal, with any required signature guarantees and any other required documents; or

- cause a DTC participant to tender such holder's Restricted Notes to the Exchange Agent's account maintained at the Depository Trust Company ("DTC") for the benefit of the Exchange Agent through DTC's Automated Tender Offer Program ("ATOP"), including transmission of a computer-generated message that acknowledges and agrees to be bound by the terms of the letter of transmittal.

By complying with DTC's ATOP procedures with respect to the Exchange Offer, the DTC participant confirms on behalf of itself and the beneficial owners of tendered Restricted Notes all provisions of the Letter of Transmittal applicable to it and such beneficial owners as fully as if it completed, executed and returned the Letter of Transmittal to the Exchange Agent.

We urge you to contact your clients promptly. Please note that the Exchange Offer will expire at 5:00 p.m., New York City time, on , 2006 (the "Expiration Date"), unless extended by the Company.

The Exchange Offer is not conditioned upon any minimum number of Restricted Notes being tendered.

Pursuant to the Letters of Transmittal, each holder of Restricted Notes will represent to the Company that (i) the holder is not an "affiliate" of the Company within the meaning of Rule 405 under the Securities Act; (ii) any Exchange Notes to be received by the holder are being acquired in the ordinary course of its business; (iii) the holder is not participating in, and has no arrangement or understanding with any person to participate in, the distribution (within the meaning of the Securities Act) of Exchange Notes to be received in the Exchange Offer; (iv) if the holder is a resident of the State of California, it falls under the self-executing institutional investor exemption set forth under Section 25102(i) of the Corporate Securities Law of 1968 and Rules 260.102.10 and 260.105.14 of the California Blue Sky Regulations; (v) if the holder is a resident of the Commonwealth of Pennsylvania, it falls under the self-executing institutional investor exemption set forth under Sections 203(c), 102(d) and (k) of the Pennsylvania Securities Act of 1972, Section 102.111 of the Pennsylvania Blue Sky Regulations and an interpretive opinion dated November 16, 1985; (vi) the holder acknowledges and agrees that any person who is a broker-dealer registered under the Securities Exchange Act of 1934 or is participating in the exchange offer for the purpose of distributing the Exchange Notes, must comply with the registration and delivery requirements of the Securities Act in connection with a secondary resale transaction of the Exchange Notes or interests therein acquired by such person and cannot rely on the position of the staff of the Securities and Exchange Commission set forth in certain no-action letters; (vii) the holder understands that a secondary resale transaction described in clause (vi) above and any resales of Exchange Notes or interests therein obtained by such holder in exchange for Restricted Notes or interests therein originally acquired by such holder directly from the Company should be covered by an effective registration statement containing the selling security holder information required by Item 507 or Item 508, as applicable, of Regulation S-K under the Securities Act; and (viii) the holder is not acting on behalf of any person or entity who could not truthfully make the foregoing representations. If the holder is not a broker-dealer, the holder represents that it is not engaged in, and does not intend to engage in, a distribution of Exchange Notes.

The enclosed Instructions to Registered Holder from Beneficial Owner contain an authorization by the beneficial owners of the Restricted Notes for you to make the foregoing representations.

The Company will not pay any fee or commission to any broker or dealer or to any other person (other than the Exchange Agent) in connection with the solicitation of tenders of Restricted Notes pursuant to the Exchange Offer. The Company will not pay or cause to be paid any transfer taxes payable on the transfer of Restricted Notes to it.

Any questions regarding the Exchange Offer should be addressed to, and additional copies of the enclosed materials may be obtained from, the Exchange Agent at the addresses and telephone numbers set forth on the front of the Letter of Transmittal.

Very truly yours,

Dave & Buster's, Inc.

NOTHING CONTAINED HEREIN OR IN THE ENCLOSED DOCUMENTS SHALL CONSTITUTE YOU OR ANY OTHER PERSON AN AGENT FOR THE COMPANY OR THE EXCHANGE AGENT, OR AUTHORIZE YOU OR ANY OTHER PERSON TO USE ANY DOCUMENT OR MAKE ANY STATEMENT ON THEIR BEHALF IN CONNECTION WITH THE EXCHANGE OFFER OTHER THAN THE DOCUMENTS ENCLOSED HEREWITH AND THE STATEMENTS CONTAINED THEREIN.

Exhibit 99.3

NOTICE OF GUARANTEED DELIVERY

Offer to Exchange its
$11^{1}/_{4}$% Senior Notes due 2014
Which Have Been Registered under the Securities Act of 1933
for Any and All Outstanding
$11^{1}/_{4}$% Senior Notes Due 2014
Pursuant to the Prosectus dated , 2006

DAVE & BUSTER'S, INC.

This Notice of Guaranteed Delivery, or one substantially equivalent to this form or an agent's message relating to guaranteed delivery, must be used by registered holders of outstanding $11^{1}/_{4}$% Senior Notes due 2014 (the "Restricted Notes") of Dave & Buster's, Inc. (the "Company"), of which $175,000,000 aggregate principal amount is outstanding, who wish to tender their Restricted Notes pursuant to the exchange offer described in the prospectus dated , 2006 (as the same may be amended or supplemented from time to time, the "Prospectus") and (a) whose certificates for the Restricted Notes are not immediately available, (b) who cannot deliver their Restricted Notes, the Letter of Transmittal and all other required documents to The Bank of New York Trust Company, N.A. (the "Exchange Agent"), or (c) who cannot complete the procedures for book-entry transfer prior to 5:00 p.m., New York City time on , 2006 or such later date and time to which the exchange offer may be extended (the "Expiration Date").

This Notice of Guaranteed Delivery, or one substantially equivalent to this form, must be delivered by hand or sent by facsimile transmission or mail to the Exchange Agent, and must be received by the Exchange Agent prior to the Expiration Date. See "The Exchange Offer—Procedures for Tendering Restricted Notes" in the Prospectus.

The Exchange Agent for the Exchange Offer is:

The Bank of New York Trust Company, N.A.

By Registered or Certified Mail:	*By Regular Mail or Overnight Carrier:*	*In Person By Hand Only:*
		Bank of New York Trust Company, N.A.
c/o The Bank of New York 101 Barclay Street, 7 East New York, New York 10286 Attention: Evangeline Gonzales Corporate Trust Operations	*c/o* The Bank of New York 101 Barclay Street, 7 East New York, New York 10286 Attention: Evangeline Gonzales Corporate Trust Operations	*c/o* The Bank of New York 101 Barclay Street, 7 East New York, New York 10286 Attention: Evangeline Gonzales Corporate Trust Operations

By Facsimile:	*To Confirm by Telephone or For Information Call:*
212-298-1915	Evangeline Gonzales at 212-815-3738

DELIVERY OF THIS NOTICE OF GUARANTEED DELIVERY TO AN ADDRESS OTHER THAN AS SET FORTH ABOVE OR TRANSMISSION OF THIS NOTICE OF GUARANTEED DELIVERY VIA FACSIMILE OTHER THAN AS SET FORTH ABOVE WILL NOT CONSTITUTE A VALID DELIVERY.

This Notice of Guaranteed Delivery is not to be used to guarantee signatures. If a signature on a Letter of Transmittal is required to be guaranteed by an "Eligible Institution" under the instructions thereto, such signature guarantee must appear in the applicable space provided in the signature box on the Letter of Transmittal.

Ladies and Gentlemen:

The undersigned hereby tenders to the Company, upon the terms and subject to the conditions set forth in the Prospectus and the related Letter of Transmittal, the Restricted Notes indicated below pursuant to the guaranteed delivery procedures set forth in "The Exchange Offer—Procedures for Tendering Restricted Notes" in the Prospectus and in the instructions to the Letter of Transmittal.

The undersigned understands that tenders of the Restricted Notes will be accepted only in principal amounts equal to $1,000 or integral multiples thereof. The undersigned also understands that tenders of the Restricted Notes pursuant to the exchange offer may be withdrawn at any time prior to the Expiration Date. For a withdrawal of a tender of Restricted Notes to be effective, it must be made in accordance with the procedures set forth in the Prospectus under "The Exchange Offer—Withdrawal Rights."

The undersigned understands that the exchange of any Exchange Notes for Restricted Notes will be made only after timely receipt by the Exchange Agent of (i) the certificates of the tendered Restricted Notes, in proper form for transfer (or a book-entry confirmation of the transfer of such Restricted Notes into the Exchange Agent's account at The Depository Trust Company), and (ii) a Letter of Transmittal (or a manually signed facsimile thereof) properly completed and duly executed with any required signature guarantees, together with any other documents required by the Letter of Transmittal (or a properly transmitted agent's message), within three New York Stock Exchange, Inc. trading days after the execution hereof.

All authority herein conferred or agreed to be conferred by this notice of guaranteed delivery shall not be affected by, and shall survive, the death or incapacity of the undersigned, and every obligation of the undersigned under this notice of guaranteed delivery shall be binding upon the heirs, personal representatives, executors, administrators, successors, assigns, trustees in bankruptcy and other legal representatives of the undersigned.

DO NOT SEND RESTRICTED NOTES WITH THIS FORM. RESTRICTED NOTES SHOULD BE SENT TO THE EXCHANGE AGENT TOGETHER WITH A PROPERLY COMPLETED AND DULY EXECUTED LETTER OF TRANSMITTAL OR PROPERLY TRANSMITTED AGENT'S MESSAGE.

PLEASE PRINT NAME(S) AND ADDRESS(ES):

This notice of guaranteed delivery must be signed by the holder(s) exactly as its name(s) appear(s) on certificate(s) for Restricted Notes or on a security position listing as the owner of Restricted Notes, or by person(s) authorized to become holder(s) by endorsements and documents transmitted with this notice of guaranteed delivery. If signature is by a trustee, executor, administrator, guardian, attorney-in-fact, officer or other person acting in a fiduciary or representative capacity, such person must provide the following information:

Name(s) of Registered Holder(s): _____

Signature(s): _____

Address: _____

(zip code)

Account Number: _____

Date: _____

Certificate No(s). (if available)	Principal Amount of Restricted Notes Tendered*

* Must be in integral multiples of $1,000.

GUARANTEE OF DELIVERY
(not to be used for signature guarantee)

The undersigned, a member firm of a registered national securities exchange or of the National Association of Securities Dealers, Inc., a commercial bank or trust company having an office or a correspondent in the United States or an "eligible guarantor institution" within the meaning of Rule 17Ad-15 under the Securities Exchange Act of 1934 hereby guarantees that the undersigned will deliver to the Exchange Agent the certificates representing the Restricted Notes being tendered hereby in proper form for transfer (or a confirmation of book-entry transfer of such Restricted Notes, into the Exchange Agent's account at the book-entry transfer facility of The Depository Trust Company ("DTC")) with delivery of a properly completed and duly executed Letter of Transmittal (or manually-signed facsimile thereof), with any required signature guarantees, or an agent's message, in the case of a book-entry transfer, and any other required documents, all within three New York Stock Exchange trading days after the date of execution of the Notice of Guaranteed Delivery.

The eligible guarantor institution that completes this form must communicate the guarantee to the Exchange Agent and must deliver the certificates representing any Restricted Notes (or a confirmation of book-entry transfer of such Restricted Notes into the Exchange Agent's account at DTC) and the Letter of Transmittal, or properly transmitted agent's message, to the Exchange Agent within the time period shown herein. Failure to do so could result in a financial loss to such eligible guarantor institution.

Name of Firm

Authorized Signature

Address

Name

(zip code)

Title

Phone Number:

Dated

Exhibit 99.4

DAVE & BUSTER'S, INC.

Offer to Exchange its
$11^{1}/_{4}$% Senior Notes Due 2014
Which Have Been Registered Under the Securities Act of 1933
for Any and All Outstanding
$11^{1}/_{4}$% Senior Notes Due 2014
Pursuant to the Prospectus dated , 2006

To Our Clients:

We are enclosing herewith a prospectus dated , 2006 (as amended or supplemented from time to time, the "Prospectus") of Dave & Buster's, Inc. (the "Company"), and the related letter of transmittal (as amended or supplemented from time to time, the "Letter of Transmittal"), that together constitute the offer of the Company (the "Exchange Offer") to exchange its $11^{1}/_{4}$% Senior Notes due 2014 (the "Exchange Notes"), which have been registered under the Securities Act of 1933 (the "Securities Act"), pursuant to a registration statement of which the Prospectus is a part, for its outstanding $11^{1}/_{4}$% Senior Notes due 2014 (the "Restricted Notes"), of which $175,000,000 aggregate principal amount is outstanding.

This material is being forwarded to you as the beneficial owner of the Restricted Notes held by us for your account but not registered in your name. A tender of such Restricted Notes may only be made by us as the holder of record and pursuant to your instructions.

Accordingly, we request instructions as to whether you wish us to tender on your behalf the Restricted Notes held by us for your account, pursuant to the terms and conditions set forth in the enclosed Prospectus and Letter of Transmittal. We urge you to read the Prospectus and Letter of Transmittal carefully before instructing us to tender your Restricted Notes.

Your instructions should be forwarded to us as promptly as possible in order to permit us to tender the Restricted Notes on your behalf in accordance with the provisions of the Exchange Offer. The Exchange Offer will expire at 5:00 p.m., New York City time, on , 2006 (the "Expiration Date"), unless extended by the Company. Any Restricted Notes tendered pursuant to the Exchange Offer may be withdrawn at any time before the Expiration Date.

If you wish to have us tender your Restricted Notes, please so instruct us by completing, executing and returning to us the enclosed instruction form.

THE LETTER OF TRANSMITTAL IS FURNISHED TO YOU FOR INFORMATION ONLY AND MAY NOT BE USED DIRECTLY BY YOU TO TENDER RESTRICTED NOTES.

Very truly yours,

INSTRUCTIONS TO
REGISTERED HOLDER FROM BENEFICIAL OWNER
OF 11 1/4% SENIOR NOTES DUE 2014
OF

DAVE & BUSTER'S, INC.

To Registered Holder:

The undersigned hereby acknowledges receipt of the prospectus dated , 2006 (as amended or supplemented from time to time, the "Prospectus") of Dave & Buster's, Inc. (the "Company"), and the related Letter of Transmittal, that together constitute the Company's offer (the "Exchange Offer") to exchange its 11 1/4% Senior Notes due 2014 (the "Exchange Notes"), all of which have been registered under the Securities Act of 1933 (the "Securities Act"), pursuant to a registration statement of which the Prospectus is a part, for its outstanding 11 1/4% Senior Notes due 2014 (the "Restricted Notes").

This will instruct you, the registered holder or book-entry transfer facility participant, as to the action to be taken by you relating to the Exchange Offer with respect to the Restricted Notes held by you for the account of the undersigned upon and subject to the terms and conditions set forth in the Prospectus and Letter of Transmittal.

The aggregate face amount of the Restricted Notes held by you for the account of the undersigned is (fill in amount):

$_____ of the 11 1/4% Senior Notes due 2014.

With respect to the Exchange Offer, the undersigned hereby instructs you (check the appropriate statement):

A.

To TENDER the following Restricted Notes held by you for the account of the undersigned (insert principal amount of Restricted Notes to be tendered—if no amount is entered and the box is checked ALL NOTES WILL BE TENDERED):

o $_____ of the 11 1/4% Senior Notes due 2014. (must be in integral multiples of $1,000)

and not to tender other Restricted Notes, if any, held by the account for the undersigned;

OR

B.

o NOT to tender any Restricted Notes by you for the account of the undersigned.

If the undersigned instructs you to tender the Restricted Notes held by you for the account of the undersigned, it is understood that you are authorized to make, on behalf of the undersigned (and the undersigned, by its signature below, hereby makes to you), the representations and warranties contained in the Letter of Transmittal that are to be made with respect to the undersigned as a beneficial owner, including but not limited to the representations that (i) the undersigned is not an "affiliate" of the Company within the meaning of Rule 405 under the Securities Act; (ii) any Exchange Notes to be received by the undersigned are being acquired in the ordinary course of its business; (iii) the undersigned is not participating in, and has no arrangement or understanding with any person

to participate in, the distribution (within the meaning of the Securities Act) of Exchange Notes to be received in the Exchange Offer; (iv) if the undersigned is a resident of the State of California, it falls under the self-executing institutional investor exemption set forth under Section 25102(i) of the Corporate Securities Law of 1968 and Rules 260.102.10 and 260.105.14 of the California Blue Sky Regulations; (v) if the undersigned is a resident of the Commonwealth of Pennsylvania, it falls under the self-executing institutional investor exemption set forth under Sections 203(c), 102(d) and (k) of the Pennsylvania Securities Act of 1972, Section 102.111 of the Pennsylvania Blue Sky Regulations and an interpretive opinion dated November 16, 1985; (vi) the undersigned acknowledges and agrees that any person who is a broker-dealer registered under the Securities Exchange Act of 1934 or is participating in the exchange offer for the purpose of distributing the Exchange Notes, must comply with the registration and delivery requirements of the Securities Act in connection with a secondary resale transaction of the Exchange Notes or interests therein acquired by such person and cannot rely on the position of the staff of the Securities and Exchange Commission set forth in certain no-action letters; (vii) the undersigned understands that a secondary resale transaction described in clause (vi) above and any resales of Exchange Notes or interests therein obtained by such holder in exchange for Restricted Notes or interests therein originally acquired by such holder directly from the Company should be covered by an effective registration statement containing the selling security holder information required by Item 507 or Item 508, as applicable, of Regulation S-K under the Securities Act; and (viii) the undersigned is not acting on behalf of any person or entity who could not truthfully make the foregoing representations. If the undersigned is not a broker-dealer, the undersigned represents that it is not engaged in, and does not intend to engage in, a distribution of Exchange Notes. It is further understood that you are authorized to agree, on behalf of the undersigned, as set forth in the Letter of Transmittal and take such other action as necessary under the Prospectus and Letter of Transmittal to effect the valid tender of the Restricted Notes. By so acknowledging that it will deliver and by delivering a prospectus meeting the requirements of the Securities Act in connection with any resale of Exchange Notes, the undersigned is not deemed to admit that it is an "underwriter" within the meaning of the Securities Act.

The undersigned hereby represents and warrants that the undersigned (i) owns the Restricted Notes tendered and is entitled to tender such Restricted Notes, and (ii) has full power and authority to tender, sell, exchange, assign and transfer the Restricted Notes and to acquire Exchange Notes issuable upon the exchange of such tendered Restricted Notes, and that, when the same are accepted for exchange, the Company will acquire good, marketable and unencumbered title to the tendered notes, free and clear of all liens, restrictions, charges and encumbrances and not subject to any adverse claim or right or restriction or proxy of any kind.

SIGN HERE

Name of Beneficial Owner(s): _____

Signature(s): _____

Names(s): _____

(please print)

Address: _____

(zip code)

Telephone Number: _____

(area code)

Taxpayer Identification Number or Social Security/Employer Identification Number: _____

Date: _____