

REGISTRATION NO. 333-

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM S-3  
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

DAVE & BUSTER'S, INC.  
(Exact name of registrant as specified in its charter)

MISSOURI  
(State of incorporation)

43-1532756  
(I.R.S. employer identification no.)

2751 ELECTRONIC LANE  
DALLAS, TEXAS 75220  
(214) 357-9588  
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

ALAN L. MURRAY  
VICE PRESIDENT -- GENERAL COUNSEL  
2751 ELECTRONIC LANE  
DALLAS, TEXAS 75220  
(214) 357-9588  
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350 SOUTH GRAND AVENUE  
32ND FLOOR  
LOS ANGELES, CALIFORNIA 90071  
(213) 473-2000

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. [ ]

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. [ ]

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

If this Form is a post-effective amendment filed pursuant to Rule 462(c) 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. [ ]

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

CALCULATION OF REGISTRATION FEE

TITLE OF EACH CLASS OF SECURITIES BEING REGISTERED	AMOUNT BEING REGISTERED	PROPOSED MAXIMUM OFFERING PRICE PER SHARE(1)	PROPOSED MAXIMUM AGGREGATE OFFERING PRICE	AMOUNT OF REGISTRATION FEE
Common Stock, \$.01 par value.....	2,300,000 shares(2)	\$24.58(2)	\$56,534,000	\$17,132

- (1) Estimated solely for purposes of calculating the amount of the registration fee pursuant to the provisions of Rule 457(c).
- (2) Amounts adjusted to reflect a three-for-two stock split (in the form of a stock dividend) effective on September 15, 1997.

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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 THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(a), MAY DETERMINE.

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Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement become effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State.

SUBJECT TO COMPLETION, DATED SEPTEMBER 11, 1997

2,000,000 SHARES

LOGO

COMMON STOCK

Of the 2,000,000 shares of Common Stock offered hereby, 1,800,000 shares are being sold by Dave & Buster's, Inc. (the "Company") and 200,000 shares are being sold by certain stockholders of the Company (the "Selling Stockholders"). The Company will not receive any of the proceeds from the sale of the shares of Common Stock by the Selling Stockholders.

The Company's Common Stock is traded on the Nasdaq National Market under the symbol DANB. On September 10, 1997, the last reported sale price of the Common Stock on the Nasdaq National Market was \$37.875 per share (\$25.25 adjusted for a three-for-two stock split on September 15, 1997). See "Price Range of Common Stock."

SEE "RISK FACTORS" ON PAGES 6 TO 8 FOR A DISCUSSION OF CERTAIN FACTORS THAT SHOULD BE CONSIDERED BY PROSPECTIVE PURCHASERS OF THE COMMON STOCK OFFERED HEREBY.

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THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

	Price to Public	Underwriting Discount(1)	Proceeds to Company(2)	Proceeds to Selling Stockholders(2)
Per Share.....	\$	\$	\$	\$
Total(3).....	\$	\$	\$	\$

- (1) See "Underwriting" for information concerning indemnification of the Underwriters and other matters.
- (2) Before deducting expenses payable by the Company, estimated at \$300,000.
- (3) The Company has granted to the Underwriters a 30-day option to purchase up to 300,000 additional shares of Common Stock solely to cover over-allotments, if any. If the Underwriters exercise the option in full, the total Price to Public will total \$ , Underwriting Discount will total \$ and the Proceeds to Company will total \$ . See "Underwriting."

The shares of Common Stock are offered by the Underwriters named herein, subject to receipt and acceptance by them and subject to their right to reject any order in whole or in part. It is expected that delivery of the certificates representing such shares will be made against payment therefor at the office of Montgomery Securities on or about October , 1997.

MONTGOMERY SECURITIES  
 PAINWEBBER INCORPORATED  
 PIPER JAFFRAY INC.

October , 1997

[INSIDE COVER PAGE OF PROSPECTUS]

Gatefold as follows:

TOP PAGE:

Company's logo, trademark phrase "There's No Place Like It"(TM)  
List of Locations

INSIDE:

Diagram of Complex floor plan with description of different areas

Company logo and trademark phrase

Back inside cover pictures

Gatefold as follows: Menus  
Panoramic photo of outside of Complex  
Logo  
Description of history of Company

CERTAIN PERSONS PARTICIPATING IN THIS OFFERING MAY ENGAGE IN TRANSACTIONS THAT STABILIZE, MAINTAIN OR OTHERWISE AFFECT THE PRICE OF THE COMPANY'S COMMON STOCK, INCLUDING STABILIZING BIDS, SYNDICATE COVERING TRANSACTIONS AND THE IMPOSITION OF PENALTY BIDS. FOR A DESCRIPTION OF THESE ACTIVITIES, SEE "UNDERWRITING."

#### PROSPECTUS SUMMARY

The following summary is qualified in its entirety by reference to the more detailed information and financial statements, including the notes thereto, appearing elsewhere in this Prospectus. Unless otherwise indicated, (i) all references to the Company refer to Dave & Buster's, Inc., a Missouri corporation, and its subsidiaries, (ii) all share and per share information has been adjusted to give effect to a three-for-two stock split (in the form of a stock dividend) on September 15, 1997, (iii) all information assumes no exercise of the Underwriters' over-allotment option and (iv) the 52 weeks ended January 31, 1993, January 30, 1994 and January 29, 1995, the 53 weeks ending February 4, 1996 and the 52 weeks ended February 2, 1997 and February 1, 1998 are referred to as fiscal 1992, 1993, 1994, 1995, 1996 and 1997, respectively.

#### THE COMPANY

The Company operates 11 large, high volume restaurant/entertainment complexes under the Dave & Buster's name (a "Dave & Buster's," a "Restaurant/Entertainment Complex" or a "Complex"). Each Dave & Buster's offers a full menu of high quality food and beverage items combined with an extensive array of entertainment attractions such as pocket billiards, shuffleboard, state-of-the-art interactive simulators and virtual reality systems, and traditional carnival-style games of skill. The Company's current 50,000 to 60,000 square foot prototype facility is designed to promote easy access to, and maximize customer cross-over between, the multiple dining and entertainment areas within each Complex. The Company emphasizes high levels of customer service to create casual, yet sophisticated, "ideal playing conditions" for adults.

The Company currently operates Dave & Buster's in the following locations: two in each of Dallas and Chicago and one each in Houston; Atlanta; Philadelphia; Hollywood, Florida; North Bethesda, Maryland; Ontario, California; and Cincinnati, Ohio. In addition, the Company expects to open a Complex in Denver, Colorado in the fourth quarter of fiscal 1997. Furthermore, the Company anticipates opening four Complexes in each of fiscal 1998 and 1999 and at least five Complexes each fiscal year thereafter. The Company has signed leases for sites in the Palisades Center in Rockland County, New York and the Irvine Spectrum Center in Irvine, California, and these Complexes are expected to open in the first and third quarters of fiscal 1998, respectively. In addition to operations in the U.S., the Company has been actively pursuing international growth opportunities. Pursuant to a license agreement with the Company, a subsidiary of Bass Plc operates one Complex in Birmingham, England and has agreed to open a total of seven Complexes in the United Kingdom by 2005. A second licensed Complex is scheduled for opening in Bristol, England in mid-1998.

The Company believes that the presentation of multiple attractions in one large facility, the high quality food and service each Complex offers, and the Company's emphasis on casual, yet sophisticated, fun for adults are key aspects of the Dave & Buster's experience. Each Complex's dining areas, bars and entertainment areas, including "the Grand Bar and Dining Room," "the Viewpoint Bar" and "the Million Dollar Midway," offer a full menu of popular, moderately priced food and beverage items. The Company's wide variety of entertainment attractions range from traditional games such as pocket billiards, shuffleboard and play-for-fun blackjack, to the latest in state-of-the-art video/computer games including interactive simulators and virtual reality systems. Each Dave & Buster's also offers group-oriented events such as "Murder Mystery Dinner Theater," "Karaoke Sing-a-Longs," televised sporting events, private parties and corporate events.

During fiscal 1996, the Company introduced the Dave & Buster's Power Card, which is purchased by customers to activate most of the Million Dollar Midway games. The Power Card enables customers to activate games more easily and encourages extended play of games. Customers have increased their initial purchases of game credits and frequency of play, resulting in higher total revenues and a 4% increase in the percentage of the Company's revenues derived from amusements, which have greater operating margins than food and beverage revenues, to 49.5% in the 26 weeks ended August 3, 1997 from 45.5% in the 26 weeks ended August 4, 1996. In addition, by replacing coin activation, the Power Card has eliminated the technical difficulties and maintenance issues associated with coin activated equipment. Furthermore, the Power Card feature has increased the Company's flexibility in the pricing and promotion of games.

The Company generated total revenues of approximately \$88.8 million in fiscal 1996. For the 26 weeks ended August 3, 1997, the Company generated total revenues of approximately \$58.3 million. Approximately 50.5% of the Company's total revenues during this period were generated by food and beverage revenues (food and non-alcoholic beverage revenues were approximately 32.4% of total revenues and alcoholic beverage revenues were 18.1% of total revenues). During this 26-week period, entertainment and other revenues represented 49.5% of total revenues.

The Company believes its Complexes have produced excellent unit economics. For the 52 weeks ended August 3, 1997, the Company's current prototype Complexes which had been open for at least 18 months (Houston, Atlanta, Philadelphia and Suburban Chicago) generated average total revenues of approximately \$12.7 million, average operating income of approximately \$3.0 million (23.3% of revenues) and average cash flow of approximately \$3.8 million (29.9% of revenues). Average cash flow is the unweighted average of Complex operating income before depreciation and amortization. Although average cash flow should not be considered an alternative to operating income as an indicator of the Company's operating performance or an alternative to cash flows from operating activities as a measure of liquidity, average cash flow is commonly used as an additional measure of operating profitability in the restaurant and certain other related industries. These Complexes required an initial investment, including land, improvements and furniture, fixtures and equipment, but excluding preopening expenses, averaging approximately \$11.1 million. Three of these four Complexes are owned rather than leased, while the most recently opened and projected Complexes are and will be leased facilities. Opening a leased facility typically reduces the Company's capital investment in a Complex and typically decreases average operating income and average cash flow as a result of rent expense.

The Company was founded in 1982 when David ("Dave") Corriveau and James ("Buster") Corley opened the first Dave & Buster's in Dallas. The Company's principal executive offices are located at 2751 Electronic Lane, Dallas, Texas 75220 and its telephone number is (214) 357-9588.

#### THE OFFERING

Common Stock to be offered by the Company.....	1,800,000 shares
Common Stock to be offered by the Selling Stockholders.....	200,000 shares
Common Stock to be outstanding after the offering.....	12,717,534 shares(1)
Use of proceeds by the Company.....	To reduce outstanding indebtedness, to fund the development of additional Complexes and for general corporate purposes. See "Use of Proceeds."
Nasdaq National Market Symbol.....	DANB
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(1) Excludes 742,712 shares of Common Stock reserved for issuance for options granted under the Company's stock option plans, of which options to purchase 243,848 shares were exercisable as of November 1, 1997.

## SUMMARY OF SELECTED CONSOLIDATED FINANCIAL AND OPERATING DATA

The following table presents selected consolidated financial data for the Company. The following data should be read in conjunction with the Consolidated Financial Statements of the Company and the notes thereto incorporated by reference herein. See "Management's Discussion and Analysis of Financial Condition and Results of Operations."

	FISCAL YEARS			26 WEEKS ENDED	
	1994	1995	1996	AUGUST 4, 1996	AUGUST 3, 1997
(IN THOUSANDS, EXCEPT PER SHARE AND OPERATING DATA)					
INCOME STATEMENT DATA:					
Food and beverage revenues.....	\$ 27,426	\$ 28,554	\$ 48,568	\$ 22,549	\$ 29,433
Amusement and other revenues .....	21,997	23,990	40,207	18,813	28,870
Total revenues.....	49,423	52,544	88,775	41,362	58,303
Operating income.....	4,038	4,908	10,721	4,803	6,692
Net income.....	\$ 2,364	\$ 2,922	\$ 6,340	\$ 2,837	\$ 3,790
Earnings per common share.....	\$ 0.30	\$ 0.34	\$ 0.58	\$ 0.26	\$ 0.35
Weighted average shares outstanding.....	7,796	8,681	10,902	10,901	10,905
OPERATING DATA:					
Number of Company operated Complexes open at end of period.....	5	7	9	8	10
Average weekly revenues per Complex.....	\$189,223	\$187,974	\$212,012	\$208,448	\$226,870

## AUGUST 3, 1997

	AS ACTUAL	ADJUSTED(1)
(IN THOUSANDS)		

## BALANCE SHEET DATA:

Working capital.....	\$ 3,819	\$ 40,249
Total assets.....	113,486	149,916
Total long-term debt (including current portion).....	23,500	18,500
Total stockholders' equity.....	79,360	120,790

(1) As adjusted to reflect the sale of 1,800,000 shares of Common Stock by the Company at an assumed public offering price of \$24.50 per share and the application of the estimated net proceeds therefrom. See "Use of Proceeds" and "Capitalization."

## RISK FACTORS

This Prospectus contains certain forward-looking statements within the meaning of the federal securities laws. Actual results and the timing of certain events could differ materially from those projected in the forward-looking statements due to the factors set forth below and elsewhere in this Prospectus. See "Special Note Regarding Forward-Looking Statements." In addition to the other information in this Prospectus, prospective investors should carefully consider the following factors in evaluating an investment in the Common Stock offered hereby.

## EXPANSION PLANS; CAPITAL RESOURCE REQUIREMENTS

The Company presently plans to open an additional Complex during the fourth quarter of fiscal 1997, four Complexes in each of 1998 and 1999 and at least five Complexes each fiscal year thereafter. Accomplishing these expansion goals will depend upon a number of factors, including the Company's ability to raise sufficient capital, locate and obtain appropriate sites, hire and train additional management personnel and construct or acquire, at reasonable cost, the necessary improvements and equipment for such Restaurant/Entertainment Complexes. In particular, the capital resources required to develop each new Restaurant/Entertainment Complex are significant. The Company's current prototype Complexes have required an initial investment, including land, improvements and furniture, fixtures and equipment, but excluding pre-opening expenses, averaging approximately \$10 million per Complex.

There can be no assurance that the Company will be able to complete its planned expansion, that the Company will continue to be successful in its development of new Restaurant/Entertainment Complexes or that new Restaurant/Entertainment Complexes, if completed, will perform in a manner consistent with the Company's most recently opened Restaurant/Entertainment Complexes or make a positive contribution to the Company's operating performance.

## SMALL NUMBER OF RESTAURANT/ENTERTAINMENT COMPLEXES

The Company operates 11 Restaurant/Entertainment Complexes. The combination of the relatively small number of locations and the significant investment associated with each new Restaurant/Entertainment Complex may cause the operating results of the Company to fluctuate significantly and adversely affect the profitability of the Company. Due to this relatively small number of locations, poor results of operations at any one Restaurant/Entertainment Complex could materially affect the profitability of the entire Company. New Restaurant/Entertainment Complexes have experienced a drop in revenues after their first year of operation, and the Company does not expect that in subsequent years any increases in comparable Complex revenues will be meaningful.

Future growth in revenues and profits will depend to a substantial extent on the Company's ability to increase the number of its Restaurant/Entertainment Complexes. Because of the substantial up-front financial requirements which are described above, the investment risk related to any one Restaurant/Entertainment Complex is much larger than that associated with most other companies' restaurant or entertainment venues.

## DEPENDENCE UPON SENIOR MANAGEMENT

The Company's future success will depend largely on the efforts and abilities of its existing senior management, particularly David O. Corriveau and James W. Corley, the Company's Co-Chief Executive Officers and the founders of the Company's business. The loss of the services of certain of the Company's management team could have a material adverse effect on the Company's business. Messrs. Corriveau and Corley are employed pursuant to employment agreements which will expire in June 2000.

## EDISON BROTHERS' BANKRUPTCY

In 1989, Edison Brothers Stores, Inc. ("Edison Brothers") acquired 80% of the Company's operating business and all of the real estate interests related to such operating business. In June 1995, Edison Brothers distributed to its stockholders all of the shares of the Company's Common Stock owned by Edison Brothers



(the "Spin-Off"), which represented 85% of the shares of the Company's Common Stock then outstanding. In November 1995, Edison Brothers and its subsidiaries filed petitions under Chapter 11 of the Federal Bankruptcy Code.

During the pendency of the Edison Brothers' bankruptcy, certain of its creditors and their representatives have alleged that the Spin-Off and related transactions could be voidable under fraudulent conveyance laws. The Edison Brothers' creditors committee filed a disclosure statement in connection with Edison Brothers' bankruptcy reorganization which identifies a possible claim on behalf of such creditors to recover the value of certain real property allegedly contributed to the Company in connection with the Spin-Off. This claim was assigned to a limited liability company owned by the Edison Brothers' creditors as a part of the confirmation of a reorganization plan of Edison Brothers in September 1997.

No claim has been asserted against the Company to date arising from the Spin-Off or the Edison Brothers' bankruptcy. Although no assurance can be made with respect to the results of any such claim, if made, the Company believes that any such claim would be without merit and intends to vigorously defend any claim if made.

#### DEPENDENCE ON DISCRETIONARY SPENDING

The Company's profits are dependent on discretionary spending by consumers, particularly by consumers living in the communities in which the Restaurant/Entertainment Complexes are located. A significant weakening in the national economy or any of the local economies in which the Company operates may cause the Company's patrons to curtail discretionary spending which, in turn, could materially affect the profitability of the entire Company.

#### INTERNATIONAL EXPANSION; LICENSE AGREEMENTS

In August 1995, the Company entered into an agreement with a subsidiary of Bass Plc ("Bass") to license the "Dave & Buster's" name and concept in the United Kingdom. In addition, the Company is pursuing agreements to license the "Dave & Buster's" name and concept in other foreign countries. The Company does not have any current plans to invest its own capital in any foreign operations. Although Bass opened a Dave & Buster's in Birmingham, England in May 1997, the Company's concept is largely untested outside the United States, and no assurance can be given that international locations will be successful. In addition, the Company's continued success is dependent to a substantial extent on its reputation, and its reputation may be affected by the performance of licensee-owned Restaurant/Entertainment Complexes over which the Company will have limited control. Any international operations of the Company will also be subject to certain external business risks such as exchange rate fluctuations, political instability and a significant weakening of a local economy in which a foreign Restaurant/Entertainment Complex is located. Certain provisions in a license agreement for the benefit of the Company may be subject to restrictions in foreign laws that limit the Company's ability to enforce such contractual provisions. In addition, it may be more difficult to register and protect the Company's intellectual property rights in certain foreign countries.

#### COMPETITION

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

## GOVERNMENT REGULATIONS

Various federal, state and local laws and permit and license requirements affect the Company's business. Significant numbers of hourly personnel at the Company's Complexes are paid at rates related to the federal minimum wage and, accordingly, legislated increases in the minimum wage will increase labor costs at the Company's Complexes. Other governmental initiatives such as mandated health insurance, if implemented, could adversely affect the Company as well as the restaurant industry in general. See "Business -- Government Regulations."

## STOCK PRICE VOLATILITY

The Company's Common Stock has been trading in the public market since June 1995. The price at which the Company's Common Stock trades is determined in the marketplace and may be influenced by many factors, including the performance of the Company, investor expectations for the Company, the trading volume in the Company's Common Stock, general economic and market conditions and competition.

The market price of the Common Stock could fluctuate substantially due to a variety of factors, including quarterly operating results of the Company or other restaurant or entertainment companies, changes in general conditions in the economy, the financial markets or the restaurant or entertainment industries, natural disasters or other developments affecting the Company or its competitors. In addition, in recent years the stock market has experienced extreme price and volume fluctuations. This volatility has had a significant effect on the market prices of securities issued by many companies for reasons unrelated to the operating performance of these companies. See "Price Range of Common Stock."

## USE OF PROCEEDS

The net proceeds to the Company from the sale of shares of Common Stock offered by the Company at an assumed price of \$24.50 per share are estimated to be \$41.4 million (\$48.4 million if the Underwriters' over-allotment option is exercised in full). The Company will not receive any proceeds from the sale of the 200,000 shares of Common Stock offered hereby by the Selling Stockholders.

The Company will utilize approximately \$5.0 million of the net proceeds to reduce its bank indebtedness, which totaled \$23.5 million at August 3, 1997. This indebtedness is evidenced by a revolving credit facility bearing interest at a floating rate based on LIBOR or, at the Company's option, the bank's prime rate plus in each case a margin based upon financial performance (8.0% at August 3, 1997). The credit facility has a final maturity date of May 2000 and provides for maximum borrowings in the principal amount of \$50.0 million. Borrowings thereunder have been used principally to open new Complexes. The remaining portion of the proceeds, together with future borrowings under the revolving credit facility, will be used to open new Complexes and for general corporate purposes. Pending the above uses, the net proceeds will be invested in short-term, investment grade, interest-bearing securities.

## DIVIDEND POLICY

The Company has not declared or paid any dividends on its Common Stock since 1989. The Company currently intends to retain all earnings for the operation and expansion of its business and does not anticipate paying any cash dividends in the foreseeable future. The Company's bank credit facility restricts the payment of cash dividends. See "Management's Discussion and Analysis of Financial Condition and Results of Operations -- Liquidity and Capital Resources."

## PRICE RANGE OF COMMON STOCK

Shares of the Company's Common Stock have been traded on the Nasdaq National Market System under the symbol DANB since June 26, 1995. The following table summarizes the high and low sale prices of the Common Stock for the periods indicated, as reported by Nasdaq, and gives effect to the three-for-two stock split (in the form of a stock dividend) completed on September 15, 1997:

	HIGH -----	LOW -----
FISCAL 1995		
Second Quarter (since June 26, 1995).....	\$14.83	\$ 7.67
Third Quarter.....	12.67	9.50
Fourth Quarter.....	10.75	7.42
FISCAL 1996		
First Quarter.....	\$16.42	\$ 9.33
Second Quarter.....	19.25	12.67
Third Quarter.....	16.92	12.33
Fourth Quarter.....	14.50	11.17
FISCAL 1997		
First Quarter.....	\$16.92	\$12.67
Second Quarter.....	21.83	13.58
Third Quarter (through September 10, 1997).....	25.67	20.17

On September 10, 1997, the last reported sales price of the Company's Common Stock was \$37.875 per share (\$25.25 to reflect the three-for-two stock split on September 15, 1997). At September 9, 1997, the Company believes there were approximately 5,000 beneficial owners of its Common Stock represented by 3,054 holders of record.

## CAPITALIZATION

The following table sets forth the capitalization of the Company as of August 3, 1997 and as adjusted to reflect the sale by the Company of 1,800,000 shares of Common Stock offered hereby at an assumed offering price of \$24.50 per share. This table should be read in conjunction with the Consolidated Financial Statements and Notes thereto incorporated by reference herein and "Management's Discussion and Analysis of Financial Condition and Results of Operations."

	AUGUST 3, 1997	
	ACTUAL	AS ADJUSTED
	-----	
	(DOLLARS IN THOUSANDS)	
Long term debt (including current portion).....	\$ 23,500	\$ 18,500
Stockholders' equity:		
Preferred Stock, 10,000,000 authorized, none issued.....	--	--
Common Stock, \$.01 par value, 50,000,000 authorized, 10,916,034 issued, 12,716,034 issued as adjusted.....	109	127
Paid-in capital.....	67,203	108,615
Retained earnings.....	12,048	12,048
	-----	-----
Total stockholders' equity.....	79,360	120,790
	-----	-----
Total capitalization.....	\$102,860	\$139,290
	=====	=====

## SELECTED CONSOLIDATED FINANCIAL DATA

The following table sets forth selected consolidated financial data for the Company. All information presented for interim periods is unaudited but, in the opinion of management, reflects all adjustments necessary for a fair presentation of the results for such periods. This data should be read in conjunction with the Consolidated Financial Statements of the Company and the Notes thereto incorporated by reference herein and "Management's Discussion and Analysis of Financial Condition and Results of Operations." The fiscal year of the Company ends on the Sunday after the Saturday closest to January 31.

	FISCAL YEARS					26 WEEKS ENDED	
	1992	1993	1994	1995	1996	AUGUST 4, 1996	AUGUST 3, 1997
	(IN THOUSANDS EXCEPT PER SHARE AND OPERATING DATA)						
<b>INCOME STATEMENT DATA:</b>							
Food and beverage revenues.....	\$ 14,891	\$ 18,445	\$ 27,426	\$ 28,554	\$ 48,568	\$ 22,549	\$ 29,433
Amusement and other revenues.....	10,603	14,453	21,997	23,990	40,207	18,813	28,870
Total revenues.....	25,494	32,898	49,423	52,544	88,775	41,362	58,303
Cost of revenues.....	5,315	6,800	10,075	10,945	18,003	8,491	11,293
Operating payroll and benefits.....	7,659	9,716	14,746	15,999	25,483	12,093	16,388
Other restaurant operating expenses.....	6,204	7,109	11,760	11,481	20,582	9,476	14,737
General and administrative expenses.....	1,854	2,271	2,724	3,905	5,734	2,672	3,833
Depreciation and amortization expense.....	1,626	1,927	2,827	3,538	5,647	2,611	3,865
Preopening cost amortization.....	696	480	1,128	161	2,605	1,216	1,495
Earn-out and special compensation.....	1,279	2,655	2,125	1,607	--	--	--
Total costs and expenses.....	24,633	30,958	45,385	47,636	78,054	36,559	51,611
Operating income.....	861	1,940	4,038	4,908	10,721	4,803	6,692
Interest income (expense), net.....	46	36	59	101	(38)	41	(480)
Income before provision for income taxes.....	907	1,976	4,097	5,009	10,683	4,844	6,212
Provision for income taxes.....	336	806	1,733	2,087	4,343	2,007	2,422
Net income.....	\$ 571	\$ 1,170	\$ 2,364	\$ 2,922	\$ 6,340	\$ 2,837	\$ 3,790
Earnings per common share.....	\$ 0.07	\$ 0.15	\$ 0.30	\$ 0.34	\$ 0.58	\$ 0.26	\$ 0.35
Weighted average shares outstanding.....	7,796	7,796	7,796	8,681	10,902	10,901	10,905
<b>BALANCE SHEET DATA:</b>							
Working capital (deficit).....	\$ 639	\$ (112)	\$ (2,637)	\$ 5,634	\$ 1,077	\$ 2,682	\$ 3,819
Total assets.....	32,140	43,403	49,030	76,201	99,436	82,468	113,486
Long-term debt (including current portion)....	8,950	8,252	9,986	500	14,250	4,500	23,500
Stockholders' equity(1).....	--	--	--	69,008	75,366	71,863	79,360
<b>OPERATING DATA:</b>							
Number of Company operated Complexes open at end of period.....	4	4	5	7	9	8	10
Average weekly revenues per Complex.....	\$149,462	\$158,164	\$189,223	\$187,974	\$212,012	\$208,448	\$226,870

(1) Prior to fiscal 1995, the Company was a subsidiary of Edison Brothers.

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

## GENERAL

In December 1982, the Company's business was founded in Dallas, Texas, by David Corriveau and James Corley. The Company's primary business is the operation of Restaurant/Entertainment Complexes under the Dave & Buster's name. The Company currently operates 11 Complexes in eight states, which include two in Dallas, two in Chicago and one each in Houston; Atlanta; Philadelphia; Hollywood, Florida; North Bethesda, Maryland; Ontario, California; and Cincinnati, Ohio.

The Company's revenues are divided into (i) food and beverage revenues and (ii) amusement and other revenues. For fiscal 1996, food and non-alcoholic beverage revenues were 34.3% of total revenues, alcoholic beverage revenues were 20.4% of total revenues, and amusement and other revenues were 45.3% of total revenues. For the 26 weeks ended August 3, 1997, food and non-alcoholic beverage revenues were 32.4% of total revenues, alcoholic beverage revenues were 18.1% of total revenues, and amusement and other revenues (including royalty revenues related to the Complex operated by Bass under a license agreement) were 49.5% of total revenues. Alcoholic beverage revenues as a percentage of total revenues have decreased over the past five fiscal years as a result of the higher percentage of floor space devoted to entertainment activities within the Company's newer Restaurant/Entertainment Complexes and consistent with the national trend towards lower alcoholic beverage consumption.

Operating payroll and benefits includes all categories of payroll, payroll taxes and fringe benefits incurred in the operation of the Restaurant/Entertainment Complexes. Other operating expenses are all other direct costs (excluding depreciation) associated with Restaurant/Entertainment Complex operation which include occupancy costs, advertising and promotional costs, supplies, services, insurance and other lesser amounts.

The Company capitalizes Restaurant/Entertainment Complex preopening expenses and amortizes such costs over the 12-month period following a Complex opening. Preopening costs consist of promotion and advertising expenses, direct costs related to hiring and training the initial workforce, and other direct costs associated with opening a new Restaurant/Entertainment Complex, and for its most recent five Complexes averaged approximately \$1.0 million. The amortization of deferred preopening costs will vary in amount in relation to the timing of Restaurant/Entertainment Complex openings.

The Company heavily promotes the opening of each new Restaurant/Entertainment Complex in order to generate substantial customer interest. The Company believes its promotion activities in the opening period establish the reputation of the business in the community and contribute to long-term profitability. There is typically an initial opening period during the first year of operation in which a new Restaurant/Entertainment Complex experiences higher revenues than in subsequent years of operation. New Restaurant/Entertainment Complexes have experienced a drop in revenues after the first year, and the Company does not expect that, in subsequent years, any increases in comparable Complex revenues will be meaningful. The Company believes that the key factors in the growth of the Company's earnings will be opening new Restaurant/Entertainment Complexes and increasing efficiency at existing Complexes as opposed to increasing revenues at existing Complexes.

## OPERATING RESULTS

26-WEEK PERIOD ENDED AUGUST 3, 1997 COMPARED TO 26-WEEK PERIOD ENDED AUGUST 4, 1996

Total revenues for the 26 weeks ended August 3, 1997 increased by 41.0% over the 26 weeks ended August 4, 1996. The increase in revenues was primarily attributable to the Hollywood, Florida location being open the full 26 weeks in fiscal 1997 and the inclusion in the fiscal 1997 period of the North Bethesda, Maryland and Ontario, California locations, which opened in the fourth quarter of fiscal 1996 and first quarter of fiscal 1997, respectively. Increased revenues at comparable Complexes and the addition of the Power Card also contributed to the increase in total revenues. Total revenues also increased due to the opening of the first Complex under the Bass licensing agreement. Total revenues for the fiscal 1997 period from the Bass agreement were \$145,000.

Cost of revenues, as a percentage of revenues, decreased to 19.4% from 20.5% in the prior comparable period. The decrease in the cost of revenues was a result of lower costs associated with food and beverage revenues and a shift in the revenue mix towards more amusement revenues. Operating payroll and benefits decreased to 28.1% from 29.2% in the prior comparable period. Operating payroll and benefits was lower due to cost reductions in variable and fixed labor and leverage from increased revenues. Other operating expenses increased to 25.3% compared to 22.9% in the prior comparable period. Other operating expenses were higher due to increased occupancy costs associated with a full 26 weeks of revenues in the fiscal 1997 period for the Hollywood, Florida location, the addition of the North Bethesda, Maryland and Ontario, California locations and higher fixed costs at the stores.

General and administrative costs increased \$1.2 million over the prior comparable period as a result of increased administrative payroll and related costs for new personnel and additional costs associated with the Company's future growth plans. As a percentage of revenues, general and administrative expenses increased slightly to 6.6% compared to 6.5% for the comparable prior period.

Depreciation and amortization expense, as a percentage of revenues, increased to 6.6% from 6.3% for the comparable prior period. This was due to the inclusion of the Hollywood, Florida location for the full 26 weeks in fiscal 1997 and the opening of the North Bethesda, Maryland and Ontario, California locations subsequent to the fiscal 1996 period. As a percentage of revenues, preopening cost amortization decreased to 2.6% compared to 2.9% in the prior comparable period. The percentage decrease is attributable to the leverage from increased revenues. The effective tax rate for the 26 weeks ended August 3, 1997 was 39.0% as compared to 41.4% for the comparable period of fiscal 1996 and was the result of a lower effective state tax rate.

#### FISCAL 1996 COMPARED TO FISCAL 1995

Total revenues for fiscal 1996 increased by 69% over fiscal 1995. The increase was attributable to the Chicago locations which were opened at the end of fiscal 1995, the fiscal 1996 openings in Hollywood, Florida and North Bethesda, Maryland and increased revenues at comparable Complexes. The mix of revenues moved away from alcoholic beverages which captured 20.4% of the total in fiscal 1996 compared with 21.0% in fiscal 1995.

Cost of revenues, as a percentage of revenues, decreased to 20.3% in fiscal 1996 from 20.8% in fiscal 1995 due to lower food and amusement costs. Operating payroll and benefits, as a percentage of revenues, decreased to 28.7% in fiscal 1996 as compared to 30.5% in fiscal 1995 due primarily to lower store management costs. Other restaurant operating expenses were 23.2% of revenues in fiscal 1996 as compared to 21.9% of revenues in fiscal 1995. This increase in other restaurant operating expense as a percentage of revenues was attributable to increased marketing costs, equipment rental and higher occupancy costs for the Company.

General and administrative expenses decreased as a percentage of revenues to 6.4% in fiscal 1996 from 7.4% in fiscal 1995 as a result of increased revenue leverage. In total dollars, general and administrative costs increased approximately \$1.8 million due to the Company operating as an independent public company for the entire year and the Company's continued expansion.

Preopening cost amortization increased approximately \$2.4 million due to amortization of preopening costs associated with four new Complexes in fiscal 1996. The effective tax rate decline for fiscal 1996 to 40.7% of pretax income from 41.7% for fiscal 1995 was due to the utilization of federal tax credits.

#### FISCAL 1995 COMPARED TO FISCAL 1994

Total revenues for fiscal 1995 increased by 6.3% over fiscal 1994. The increase was attributable to two new openings in Chicago in the fourth fiscal quarter and increased revenues at comparable Complexes, offset by a normal reduction in revenues in the Company's Philadelphia location following its first year of operation. The mix of revenues moved away from alcoholic beverages which captured 21.0% of the total in fiscal 1995 compared with 22.9% for fiscal 1994.

Cost of revenues, as a percentage of revenues, increased to 20.8% in fiscal 1995 as compared to 20.4% in fiscal 1994 due to a higher cost of amusement and other revenues. The increase in operating payroll and

benefits in fiscal 1995 to 30.5% of revenues from 29.8% in fiscal 1994 was due primarily to increased management costs offset by modest decreases in other payroll categories. Other restaurant operating expenses were 21.9% of revenues in fiscal 1995 as compared to 23.8% in fiscal 1994. This decrease in other restaurant operating expenses as a percentage of revenue was attributable to decreased marketing costs for the Company and decreased occupancy costs related to the Philadelphia Complex.

General and administrative expenses increased as a percentage of revenues to 7.4% in fiscal 1995 from 5.5% in fiscal 1994 as a result of increased administrative payroll and related costs for new personnel and additional costs resulting from the Company operating as an independent public company.

The effective tax rate in fiscal 1995 was 41.7% of pretax income compared to 42.3% for fiscal 1994, with the decline the result of a lower effective state tax rate for the Company.

#### LIQUIDITY AND CAPITAL RESOURCES

Cash flows from operations increased from \$5.0 million in fiscal 1995 to \$13.1 million in fiscal 1996. This increase was due to the Chicago locations which were opened at the end of fiscal 1995 and the Hollywood, Florida and North Bethesda, Maryland Complexes which were opened in fiscal 1996. Cash flows from operations increased from \$3.2 million in the first 26 weeks of fiscal 1996 to \$6.1 million in the first 26 weeks of fiscal 1997. The increase was a result of the Hollywood, Florida location being open for the full 26 week period, the North Bethesda, Maryland location opening in the fourth quarter of fiscal 1996 and the Ontario, California location opening in the first quarter of fiscal 1997. The increase in cash flows from operations was reduced by an increase in inventories, prepaid costs, preopening costs and other assets related to the new openings.

The Company has a secured revolving line of credit which permits borrowing up to a maximum of \$50.0 million. At August 3, 1997, \$22.8 million was available under this facility. Borrowings under this facility bear interest at a floating rate based on LIBOR or, at the Company's option, the bank's prime rate plus in each case a margin based upon financial performance. The facility, which matures in May 2000, has certain financial covenants including minimum consolidated tangible net worth, maximum leverage ratio, minimum fixed charge coverage and maximum level of capital expenditures for new Complexes.

The Company's plan is to open one additional Complex in the remaining portion of fiscal 1997 and four new Complexes in fiscal 1998. The Company estimates that its capital expenditures will be approximately \$41 million and \$42 million for fiscal 1997 and 1998, respectively. These amounts are inclusive of approximately \$250,000 to \$375,000 of capitalized maintenance and improvements for each existing Complex in each year and costs associated with the construction of the Company's new corporate headquarters. The Company intends to finance its capital expenditures with proceeds from this offering, income from operations, the revolving credit facility described above and equipment leases.

#### QUARTERLY FLUCTUATIONS, SEASONALITY AND INFLATION

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

#### NEW ACCOUNTING PRONOUNCEMENTS

The Financial Accounting Standards Board ("FASB") has issued Statement of Financial Accounting Standards ("SFAS") No. 128, "Earnings per Share." The Company does not believe that the adoption of this statement in fiscal 1997 will have a significant impact on the Company.



## BUSINESS

## GENERAL

The Company operates 11 large, high-volume Restaurant/Entertainment Complexes under the Dave & Buster's name. Each Dave & Buster's offers a full menu of high quality food and beverage items combined with an extensive array of entertainment attractions such as pocket billiards, shuffleboard, state-of-the-art interactive simulators and virtual reality systems, and traditional carnival-style games of skill. The Company's current 50,000 to 60,000 square foot prototype facility is designed to promote easy access to, and maximize customer cross-over between, the multiple dining and entertainment areas within each Complex. The Company emphasizes high levels of customer service to create casual, yet sophisticated, "ideal playing conditions" for adults.

The Company currently operates Dave & Buster's in the following locations: two in each of Dallas and Chicago and one each in Houston; Atlanta; Philadelphia; Hollywood, Florida; North Bethesda, Maryland; Ontario, California; and Cincinnati, Ohio. In addition, the Company expects to open a Complex in Denver, Colorado in the fourth quarter of fiscal 1997. Furthermore, the Company anticipates opening four Complexes in each of fiscal 1998 and 1999 and at least five Complexes each fiscal year thereafter. The Company has signed leases for sites in the Palisades Center in Rockland County, New York and the Irvine Spectrum Center in Irvine, California, and these Complexes are expected to open in the first and third quarters of fiscal 1998, respectively. In addition to operations in the U.S., the Company has been actively pursuing international growth opportunities. Pursuant to a license agreement with the Company, Bass operates one Complex in Birmingham, England and has agreed to open a total of seven Complexes in the United Kingdom by 2005. A second licensed Complex is scheduled for opening in Bristol, England in mid-1998.

## THE DAVE &amp; BUSTER'S CONCEPT

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

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

**A Large, Multiple Attraction Destination.** The Complexes range in approximate total area from 30,000 square feet to 70,000 square feet, with a current prototype of approximately 50,000 to 60,000 square feet. The large scale of each operation, together with the numerous food, beverage and entertainment options offered, is designed to attract a diverse customer base and consolidate multiple-destination customer spending into one location. Each Dave & Buster's attracts local customers from a wide geographical area (estimated to be a twenty mile radius) along with tourists, conventioners and business travelers.

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

**High Standard of Customer Service.** Through intensive training, constant monitoring and stringent operational controls, the Company strives to maintain a consistently high standard of food, beverage and amusement service throughout each Dave & Buster's. The Company's commitment to customer service is

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

**Comfortable Adult Atmosphere.** Each Dave & Buster's is primarily adult oriented and, while children are welcome, strict guidelines are enforced. Customers under 21 years of age must be accompanied by a responsible adult at all times during their visit and are not allowed in a Dave & Buster's after 10:00 p.m. (11:00 p.m. in the summer months). The Company believes that these policies help maintain the type of pleasant, relaxed atmosphere that appeals to adult customers. The Company also believes that this atmosphere allows it to attract groups of customers such as private parties and business organizations.

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

#### MENU AND ENTERTAINMENT OFFERINGS

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

The Dave & Buster's menu is offered from early lunch until late night and features moderately priced food designed to appeal to a wide variety of customers. This well-rounded fare includes gourmet pastas, individual sized pizzas, burgers, steaks, seafood and chicken. Specialties of the house include babyback ribs, blackened chicken pasta, mesquite-peppered rib eye steak and a Philadelphia cheese steak sandwich. A wide variety of other appetizers, soups, salads and sandwiches is also available. Entree prices range from \$6.50 to \$18.95, with many entrees in the \$7.50 to \$10.95 range. In order to promote customer flow and complement the entertainment areas, full, sit down food service is offered not only in the restaurant areas but throughout Dave & Buster's, with the exception of the "Play-for-Fun" Casino. In addition, throughout the restaurant and entertainment areas including the "Play-for-Fun" Casino, each Dave & Buster's offers full bar service including over 50 different beers, an extensive wine selection and a variety of non-alcoholic beverages such as its own private label, "D&B Old Fashioned Philly Root Beer."

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

**Traditional Entertainment.** Each Dave & Buster's offers a number of traditional entertainment options. These traditional offerings include "world class" pocket billiards, "championship-style" shuffleboard tables, "play-for-fun" casino featuring blackjack played on authentic tables, the Show Room which is designed for hosting private social parties and business gatherings as well as Company sponsored events, and D&B Lanes which is bowling, Dave & Buster's style. Other than the "play for fun" casino, traditional entertainment games are rented by the hour.

**Million Dollar Midway Games.** The largest area in each Dave & Buster's is the Million Dollar Midway, which is designed to provide high-energy, fantasy entertainment through a broad selection of electronic, skill and sports-oriented games. The Power Card activates all the midway games (with the exception of the coin action games) and can be recharged again and again for more play. The Power Card enables customers to activate games more easily and encourages extended play of games. Customers have increased their initial

purchases of game credits and frequency of play, resulting in an increase in the Company's total revenues and a 4% increase in the percentage of the Company's revenues derived from amusements, which have greater operating margins than food and beverage revenues, to 49.5% in the 26 weeks ended August 3, 1997 from 45.5% in the 26 weeks ended August 4, 1996. In addition, by replacing coin activation, the Power Card has eliminated the technical difficulties and maintenance issues associated with coin activated equipment. Furthermore, the Power Card feature has increased the Company's flexibility in the pricing and promotion of games.

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

Classic midway entertainment includes sports-oriented games of skill, carnival-style games, which are intended to replicate the atmosphere found in many local county fairs, and D&B Downs, which is one of several multiple-player race games offered in each Dave & Buster's. At the Winner's Circle, players take the coupons they have won from selected games of skill to be redeemed for a wide variety of prizes, many of which display the Dave & Buster's logo. The prizes include stuffed animals, ballcaps, T-shirts, boxer shorts and small electronic items.

#### UNIT ECONOMICS

For the 52 weeks ended August 3, 1997, the Company's current prototype Complexes which had been open for at least 18 months (Houston, Atlanta, Philadelphia and Suburban Chicago) generated average net revenues of approximately \$12.7 million, average operating income of approximately \$3.0 million, or 23.3% of revenues, and average cash flow of approximately \$3.8 million, or 29.9% of revenues. Average cash flow is the unweighted average of Complex operating income before depreciation and amortization. Although average cash flow should not be considered an alternative to operating income as an indicator of the Company's operating performance or an alternative to cash flows from operating activities as a measure of liquidity, average cash flow is commonly used as an additional measure of operating profitability in the restaurant and certain other related industries. These Restaurant/Entertainment Complexes required an initial investment, including land, improvements and furniture, fixtures and equipment, but excluding preopening expenses, averaging approximately \$11.1 million. Three of these four Complexes are owned rather than leased, while the most recently opened and projected Complexes are and will be leased facilities. Opening a leased facility typically reduces the Company's capital investment in a Complex and typically decreases average operating income and average cash flow as a result of rent expense.

## LOCATIONS

The following table provides information with respect to those Complexes which are open and those under development:

LOCATION -----	TYPE -----	OPENING DATE -----	APPROXIMATE SQUARE FOOTAGE -----
Original Prototype:			
Dallas/Stemmons.....	Owned	December 1982	40,000
Dallas/Central.....	Leased	January 1988	31,000
Current Prototype:			
Houston.....	Owned	October 1991	53,000
Atlanta.....	Owned	October 1992	53,000
Philadelphia.....	Leased	February 1994	70,000
Suburban Chicago (Addison).....	Owned	November 1995	50,000
Chicago (Gold Coast).....	Leased	January 1996	58,000
Hollywood, Florida.....	Leased(1)	April 1996	50,000
North Bethesda, Maryland.....	Leased	November 1996	60,000
Ontario, California.....	Leased	March 1997	58,000
Cincinnati.....	Leased	September 1997	63,000
Future Sites:			
Denver, Colorado.....	Leased	Fiscal 1997(2)	48,000
Rockland County, New York.....	Leased	Fiscal 1998(2)	50,000
Irvine, California.....	Leased	Fiscal 1998(2)	55,000
International Licensed Locations:			
Birmingham, England.....	--	May 1997	40,000
Bristol, England.....	--	Fiscal 1998(2)	--

(1) The Company leases the land, but owns the building.

(2) Projected.

## EXPANSION AND SITE SELECTION

The Company continually seeks to identify and evaluate new locations for expansion. The Company expects to open a Complex in Denver, Colorado in the fourth quarter of fiscal 1997, four Complexes in each of fiscal 1998 and 1999 and at least five more each fiscal year thereafter. The Company has signed leases for sites in the Palisades Center in Rockland County, New York and the Irvine Spectrum Center in Irvine, California, and these Complexes are expected to open in the first and third quarters of fiscal 1998, respectively. Potential locations for additional openings in fiscal 1998 have been tentatively identified and site negotiations are currently in progress.

The Company believes that the location of its Complexes is critical to the Company's long-term success and devotes significant time and resources to analyzing each prospective site. In general, the Company targets high-profile sites within a metropolitan area of at least one million people. In addition to carefully analyzing demographic information (such as average income levels) for each prospective site, the Company considers factors such as visibility, accessibility to regional highway systems, zoning, regulatory restrictions and proximity to shopping areas, office complexes, tourist attractions and residential areas. The Company also carefully studies the restaurant and entertainment competition in prospective areas. In addition, the Company must select a site of sufficient size to accommodate its prototype facility with ample, convenient customer parking.

The typical cost of opening a Dave & Buster's ranges from approximately \$7.0 million to \$12.0 million (excluding preopening expenses and developer allowances), depending upon the location and condition of the premises. The Company bases its decision of owning or leasing a site on the projected unit economics. The Company's more recently opened and its projected Complexes have been leased facilities. Opening a leased

facility reduces the Company's capital investment in a Complex, because the Company does not incur land and site improvement costs and might also receive a construction allowance from the landlord for improvements. The decor and interior design of a Dave & Buster's are flexible and can be readily adapted to different types of buildings. The Company has opened Complexes in both new structures and within existing buildings, and Complexes are located in both urban and suburban areas.

#### INTERNATIONAL

In August 1995, the Company entered into a license agreement with Bass to license the "Dave & Buster's" name and concept in the United Kingdom. Under this Agreement, Bass opened one Complex in Birmingham, England in May 1997 and has agreed to open a total of seven Complexes in the United Kingdom by 2005. Bass has scheduled a second Complex to open in Bristol, England in mid-1998. Under the license agreement, Bass is required to pay the Company a royalty based upon gross revenues, net of value added taxes. The royalty rate paid by Bass is a sliding scale which averages 5% of gross revenues. The license agreement contains strict operating covenants to ensure consistency of the menu and entertainment offerings with those in the Company operated Complexes.

The Company is considering entering into agreements to license the "Dave & Buster's" name and concept in additional foreign countries. The Company does not have any current plans to invest its own capital in any foreign operations. In August 1997, the Company entered into two different letters of intent to license the "Dave & Buster's" name and concept in the Pacific Rim and Europe. TaiMall Development Co. proposes to develop seven locations in Taiwan, Hong Kong, the People's Republic of China and Singapore. The first location is expected to open in December 1998 in a suburban Taipei mall. S.T.A. Salmann Trust proposes to develop seven locations in Germany, Switzerland and Austria, with the first location targeted to open in a mall currently under development in Berlin. There is no assurance that these letters of intent will result in definitive agreements.

#### OPERATIONS AND MANAGEMENT

The Company's ability to manage a complex operation including both high volume restaurants and bars and diverse entertainment attractions has been critical to its overall success. The Company strives to maintain quality and consistency in each of its Restaurant/Entertainment Complexes through the careful training and supervision of personnel and the establishment of, and adherence to, high standards relating to personnel performance, food and beverage preparation, entertainment productions and equipment, and maintenance of facilities. The Company believes that it has been able to attract high quality, experienced restaurant and entertainment management and personnel with its competitive compensation and bonus programs and policy of promoting from within the Company. Staffing levels vary according to the size of the location, but a prototype Dave & Buster's is managed by one general manager, two assistant general managers, six line managers and one business manager.

In general, each prototype Dave & Buster's also employs one purchasing manager, one amusement manager, one assistant amusement manager, one Midway auditor, one kitchen manager, two assistant kitchen managers and two special events sales managers.

The Company has experienced relatively little turnover of managerial employees. On average, the Company's current general managers possess approximately four and a half years of experience with the Company. The general manager of each Dave & Buster's reports to a Regional Manager who reports to the Vice President, Director of Operations.

All managers, many of whom are promoted from within, must complete an eleven-week training program during which they are instructed in areas such as food quality and preparation, customer service, alcoholic beverage service, entertainment management and employee relations. The Company has also prepared operations manuals relating to food and beverage quality and service standards and proper operation and playing conditions of the Company's entertainment attractions. New sales staff and entertainment personnel

participate in approximately three weeks of training under the close supervision of Company management. Management strives to instill enthusiasm and dedication in its employees, regularly solicits employee suggestions concerning Company operations and endeavors to be responsive to employees' concerns. In addition, the Company has extensive and varied programs designed to recognize and reward employees for superior performance.

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

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

#### MARKETING, ADVERTISING AND PROMOTION

The Company operates its marketing, advertising and promotional programs through an in-house corporate marketing department which employs a full-time corporate Marketing Director. The Company focuses on three primary marketing target audiences in its advertising and promotional programs: local market-area customers; out-of-town visitors; and corporate and group customers.

**Local Market-Area Customers.** Management believes that its strongest marketing tool is customer referrals. In addition, the Company continually updates its local (10 to 20 mile radius) customer database which is utilized for specifically targeted marketing and advertising programs. Through a mix of marketing techniques such as direct mailings, point-of-sale materials, outdoor advertising and local-market print and broadcast media, the Company promotes seasonal events, in-house promotions, special offers and new entertainment attractions.

**Out-of-Town Visitors.** The Company markets aggressively to attract tourists and business travelers by placing advertisements in local tourist and special event guides and by otherwise promoting each Dave & Buster's as a local "must see" attraction. The Company monitors local tourist and visitors bureaus for convention schedulings, festivals and special sporting events. Additionally, through the use of local trade arrangements such as "concierge referral programs," the Company extends its marketing presence into local high-traffic tourist and business traveler areas.

**Corporate and Group Marketing.** The Complex-based special events sales managers book group events such as business seminars, receptions and private parties. The Company develops and maintains a database for corporate and group bookings. Each Dave & Buster's has hosted events for many large multinational, national and regional businesses. Many of the Company's corporate and group customers have hosted repeat events. In addition to the rapport developed with these clients, the Company stages and promotes its own local group marketing opportunities such as "Karaoke Sing-a-Longs," "Murder Mystery Dinner Theater," televised sporting events and charity benefits. The corporate marketing department is also responsible for budgeting and controlling media and production costs. During fiscal 1996, the Company's expenditures for advertising and promotions were approximately 2.6% of its revenues.

#### COMPETITION

The restaurant and entertainment industries are highly competitive. There are a great number of food and beverage service operations and entertainment businesses that compete directly and indirectly with the Company. Many of these entities are larger and have significantly greater financial resources and a greater number of units than does the Company. Although there are few other companies presently utilizing the concept of combining entertainment and restaurant operations to the same extent as the Company, the

Company may encounter increased competition in the future, which may have an adverse effect on the profitability of the Company. In addition, the legalization of casino gambling in geographic areas near any Restaurant/Entertainment Complex would create the possibility for entertainment alternatives which could have a material adverse effect on the Company's business.

#### EMPLOYEES

At August 3, 1997, the Company employed approximately 3,200 persons, 72 of whom served in administrative or executive capacities, 270 of whom served as restaurant and entertainment management personnel, and the remainder of whom were hourly restaurant and entertainment personnel.

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

#### INTELLECTUAL PROPERTY

The Company has registered the servicemark "Dave & Buster's" with the United States Patent and Trademark Office and in various foreign countries. The Company has registered certain additional servicemarks with the United States Patent and Trademark Office and the United Kingdom.

#### GOVERNMENT REGULATIONS

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

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

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

The Company's operations are also subject to federal and state laws governing such matters as wages, working conditions, citizenship requirements and overtime. Some states have set minimum wage requirements

higher than the federal level, and the federal government recently increased the federal minimum wage. In September 1997, the second phase of an increase in the minimum wage will be implemented in accordance with the Federal Fair Labor Standards Act of 1996. Significant numbers of hourly personnel at the Company's Complexes are paid at rates related to the federal minimum wage and, accordingly, increases in the minimum wage will increase labor costs at the Company's Complexes. Other governmental initiatives such as mandated health insurance, if implemented, could adversely affect the Company as well as the restaurant industry in general. The Company is also subject to the Americans With Disabilities Act of 1990, which, among other things, may require certain minor renovations to its Complexes to meet federally mandated requirements. The cost of these renovations is not expected to be material to the Company.

#### LEGAL PROCEEDINGS

From time to time, the Company is a defendant in litigation arising in the ordinary course of its business, including claims resulting from "slip and fall" accidents, claims under federal and state laws governing access to public accommodations and employment-related claims. To date, none of such litigation, some of which is covered by insurance, has had a material effect on the Company.



## MANAGEMENT

The executive officers and directors of the Company are as follows:

NAME ----	AGE ---	POSITION -----
James W. ("Buster") Corley.....	46	Founder, Co-Chairman and Chief Executive Officer, Chief Operating Officer and Director
David O. Corriveau.....	46	Founder, Co-Chairman and Chief Executive Officer, President and Director
Barry N. Carter.....	49	Vice President, Director of Store Support
Gary W. Duffey.....	43	Vice President of Amusements
Cory J. Haynes.....	37	Vice President, Assistant Director of Operations
Charles M. Krauthamer, Jr.....	44	Vice President of Training and Opening Team Director
Kimberly M. Martinez.....	35	Vice President of Purchasing
Charles Michel.....	44	Vice President, Chief Financial Officer and Treasurer
Alan L. Murray.....	52	Vice President, Director of Legal and Administration and Secretary
Dennis C. Paine.....	49	Vice President, Director of Communications
J. Michael Plunkett.....	46	Vice President, Director of Information Systems
Mary E. Reynolds.....	33	Vice President of Human Resources
Sterling R. Smith.....	45	Vice President, Director of Operations
Bryan L. Spain.....	49	Vice President, Director of Real Estate Development
Allen J. Bernstein.....	51	Director
Peter A. Edison.....	42	Director
Walter S. Henrion.....	58	Director
Mark A. Levy.....	51	Director
Christopher C. Maguire.....	36	Director
Andrew E. Newman.....	53	Director
Mark B. Vittert.....	49	Director

## SELLING STOCKHOLDERS

The table below sets forth the beneficial ownership of the Company's Common Stock by the Selling Stockholders. Each of the Selling Stockholders is a director and executive officer of the Company and has sole voting and investment power with respect to the shares of Common Stock beneficially owned by him.

NAME ----	SHARES OWNED BEFORE THE OFFERING(1)		SHARES BEING OFFERED	SHARES OWNED AFTER THE OFFERING(1)	
	NUMBER	PERCENT		NUMBER	PERCENT
James W. ("Buster") Corley.....	523,473	4.8%	100,000	423,473	3.3%
David O. Corriveau.....	523,473	4.8%	100,000	423,473	3.3%

(1) Includes shares issuable upon exercise of stock options which are vested or will be vested within 60 days.

## UNDERWRITING

The Underwriters named below (the "Underwriters") have severally agreed, subject to the terms and conditions contained in the underwriting agreement (the "Underwriting Agreement") by and among the Company, the Selling Stockholders and the Underwriters, to purchase from the Company and the Selling Stockholders the number of shares of Common Stock indicated below opposite their respective names at the initial public offering price less the underwriting discount set forth on the cover page of this Prospectus. The Underwriting Agreement provides that the obligations of the Underwriters are subject to certain conditions precedent and that the Underwriters are committed to purchase all of the shares to if they purchase any.

UNDERWRITER -----	NUMBER OF SHARES -----
Montgomery Securities.....	
PaineWebber Incorporated.....	
Piper Jaffray Inc. ....	
	-----
Total.....	2,000,000 =====

The Underwriters have advised the Company and the Selling Stockholders that the Underwriters propose initially to offer the Common Stock to the public on the terms set forth on the cover page of this Prospectus. The Underwriters may allow, and such dealers may reallocate, to selected dealers a concession of not more than \$ \_\_\_\_\_ per share, and the Underwriters may allow a concession of not more than \$ \_\_\_\_\_ per share to certain other dealers. After the offering, the public offering price and other selling terms may be changed by the Underwriters. The Common Stock is offered subject to receipt and acceptance by the Underwriters and to certain other conditions, including the right to reject orders in whole or in part.

The Company has granted an option to the Underwriters, exercisable during the 30-day period after the date of this Prospectus, to purchase up to an aggregate maximum of 300,000 additional shares of Common Stock, to cover over-allotments, if any, at the same price per share as the initial shares to be purchased by the Underwriters. To the extent the Underwriters exercise this option, the Underwriters will be committed, subject to certain conditions, to purchase such additional shares in approximately the same proportion as set forth in the above table. The Underwriters may purchase such shares only to cover over-allotments made in connection with this offering.

The Underwriting Agreement provides that the Company and the Selling Stockholders will indemnify the Underwriters and their controlling persons against certain liabilities, including civil liabilities under the Securities Act of 1933, as amended, or will contribute to payments the Underwriters may be required to make in respect thereof.

All of the Company's executive officers and directors and certain of its stockholders have agreed that, for a period of 90 days after the date of this Prospectus, they will not, without the prior written consent of Montgomery Securities, directly or indirectly sell, offer, contract or grant any option to sell, pledge, transfer, or otherwise dispose of any shares of Common Stock, options or warrants to acquire shares of Common Stock, or securities exchangeable or exercisable for or convertible into shares of Common Stock, other than for the shares of Common Stock offered by the Selling Stockholders hereby. In addition, the Company has agreed that, for a period of 90 days after the date of this Prospectus, it will not, without the prior written consent of Montgomery Securities, directly or indirectly issue, sell, offer, contract or grant any option to sell, pledge, transfer, or otherwise dispose of any shares of Common Stock, options or warrants to acquire shares of Common Stock, or securities exchangeable or exercisable for or convertible into shares of Common Stock, other than (i) the shares of Common Stock offered by the Company hereby or (ii) shares of Common Stock issued pursuant to the exercise of certain outstanding options or (iii) options granted after the date of this Prospectus under the Company's existing plans.

Certain persons participating in this offering may over-allot or effect transactions which stabilize, maintain or otherwise affect the market price of the Common Stock at levels above those which might otherwise prevail in the open market. Such transactions may include stabilizing bids, effecting syndicate

covering transactions or imposing penalty bids. A stabilizing bid means the placing of any bid or effecting any purchase for the purpose of pegging, fixing or maintaining the price of the Common Stock. A syndicate covering transaction means the placing of any bid on behalf of the underwriting syndicate or the effecting of any purchase to reduce a short position created in connection with the offering. The Underwriters may also elect to reduce any short position by exercising all or part of the over-allotment options described above. A penalty bid means an arrangement that permits the Underwriters to reclaim a selling concession from a syndicate member in connection with the offering when shares of Common Stock sold by the syndicate member are purchased in syndicate covering transactions. Such transactions may be effected on the Nasdaq National Market, in the over-the-counter market, or otherwise.

In general, the purchase of a security for the purpose of stabilization or to reduce a short position could cause the price of the security to be higher than it might be in the absence of such purchase. Neither the Company nor any of the Underwriters makes any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of the Common Stock. In addition, neither the Company nor any of the Underwriters makes any representation that the Underwriters will engage in such transactions or that such transactions, once commenced, will not be discontinued without notice.

#### LEGAL MATTERS

The validity of the Common Stock offered hereby will be passed upon for the Company by Crouch & Hallett, L.L.P., Dallas, Texas. Certain legal matters will be passed on for the Underwriters by Fried, Frank, Harris, Shriver & Jacobson, a partnership including professional corporations, Los Angeles, California.

#### EXPERTS

The consolidated financial statements of the Company and subsidiaries as of February 4, 1996 and February 2, 1997, and for each of the fiscal years in the three-year period ended February 2, 1997, incorporated by reference herein, have been audited by Ernst & Young LLP, independent auditors, as indicated in their report with respect thereto, and is incorporated elsewhere herein in reliance upon such reports given upon the authority of such firm as experts in accounting and auditing.

#### AVAILABLE INFORMATION

The Company is subject to the informational requirements of the Securities Exchange Act of 1934 (the "Exchange Act") and in accordance therewith files reports and other information with the Securities and Exchange Commission (the "Commission"). Such reports, proxy statements and other information filed by the Company at the Commission can be inspected and copied, at prescribed rates, at the public reference facilities of the Commission at Room 1024, 450 Fifth Street, N.W., Washington, D.C. 20549, and at the Commission's regional offices at 7 World Trade Center, Suite 1300, New York, New York 10048, and Citicorp Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661. Copies of such material can be obtained from the Public Reference Section of the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549. Certain reports, proxy statements and other information filed by the Company may also be obtained at the Commission's World Wide Web site, located at <http://www.sec.gov>. In addition, such material can be inspected at the offices of the Nasdaq Stock Market, Inc., 1735 K Street, N.W., Washington, D.C. 20006.

The Company has filed with the Commission a Registration Statement on Form S-3 (together with all amendments, exhibits, schedules and supplements thereto, the "Registration Statement") under the Securities Act of 1933, as amended, with respect to the Common Stock offered hereby. This Prospectus, which is a part of the Registration Statement, does not contain all of the information set forth in the Registration Statement, certain portions of which have been omitted as permitted by the rules and regulations of the Commission. The Registration Statement may be inspected, and copied at prescribed rates, at the Commission's public reference facilities at Room 1024, Judiciary Plaza, 450 Fifth Street, N.W., Washington, D.C. 20549. Statements made in this Prospectus as to the contents of any contract, agreement or other document

referred to are not necessarily complete. With respect to each contract, agreement or other document, reference is made to the copy of such document filed as an exhibit to the Registration Statement or otherwise filed with the Commission. Each such statement is qualified in its entirety by such reference.

#### DOCUMENTS INCORPORATED BY REFERENCE

The following documents filed by the Company with the Commission are hereby incorporated by reference into this Prospectus:

- (1) Annual Report on Form 10-K for the fiscal year ended February 2, 1997;
- (2) Quarterly reports on Form 10-Q for the first two fiscal quarters of the fiscal year ending February 1, 1998; and
- (3) The description of the Company's Common Stock contained in the Company's Registration Statement on Form 8-A, including any amendment filed for the purpose of updating such information.

All documents filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Prospectus and prior to the termination of the offering made hereby shall be deemed to be incorporated by reference in this Prospectus and to be a part hereof from the respective dates of the filing of such documents. Any statement or information contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed modified or superseded for purposes of this Prospectus to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Prospectus.

The Company will provide without charge to each person, including any beneficial owner, to whom a Prospectus is delivered, upon written or oral request of such person, a copy of the documents incorporated by reference herein, other than exhibits to such documents not specifically incorporated by reference. Such requests should be directed to Dave & Buster's, Inc., 2751 Electronic Lane, Dallas, Texas 75220, Attention: Secretary (telephone (214) 357-9588).

#### SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements in this Prospectus constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties, and other factors which may cause the actual results, performance, or achievements of the Company to be materially different from any future results, performance, or achievements expressed or implied by such forward-looking statements. Such factors include, among others, the following: general economic and business conditions; competition; development and operating costs; adverse publicity; consumer trial and frequency; availability, locations and terms of sites for complex development; quality of management; business abilities and judgment of personnel; availability of qualified personnel; food, labor and employee benefit costs; changes in, or the failure to comply with, government regulations; and the Risk Factors elsewhere described in this Prospectus.

No dealer, sales representative or any other person has been authorized to give any information or to make any representations in connection with this Offering other than those contained in this Prospectus, and, if given or made, such information or representations must not be relied upon as having been authorized by the Company, the Selling Stockholders or any of the Underwriters. This Prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities other than the shares of Common Stock to which it relates or an offer to, or a solicitation of, any person in any jurisdiction in which such an offer or solicitation would be unlawful. Neither the delivery of this Prospectus nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Company since the date hereof or that the information contained herein is correct as of any time subsequent to the date hereof.

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2,000,000 SHARES

[LOGO]

COMMON STOCK

-----  
 PROSPECTUS  
 -----

MONTGOMERY SECURITIES

PAINWEBBER INCORPORATED

PIPER JAFFRAY INC.

, 1997

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## PART II

## INFORMATION NOT REQUIRED IN PROSPECTUS

## ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.

The following expenses will be paid by the Company:

ITEM ----	AMOUNT(1) -----
SEC registration fee.....	\$ 17,132
NASD filing fee.....	6,154
Nasdaq additional listing fee.....	17,500
Legal fees and expenses.....	35,000
Accounting fees.....	35,000
Printing and engraving expenses.....	90,000
Transfer agent fees.....	5,000
Blue sky fees and expenses.....	20,000
Miscellaneous.....	74,214
	-----
Total.....	\$300,000 =====

- -----  
(1) All items other than SEC registration fee are estimated

## ITEM 15. 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 Eleven of the Company's Articles eliminates, to the fullest extent permissible under the corporation laws of the State of Missouri, the liability of directors to the Company 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. The Company also maintains a directors' and officers' liability insurance policy insuring directors and officers of the Company for up to \$10.0 million of covered losses as defined in the policy. The Company has also entered into indemnity agreements with its executive officers and directors which generally provide for indemnification for such individuals to the fullest extent provided by law. Reference is also made to the indemnification and contribution provisions of the Underwriting Agreement.

## ITEM 16. EXHIBITS.

- 1.1 -- Proposed form of Underwriting Agreement.(2)
- 4.1 -- Restated Articles of Incorporation of the Company.(1)
- 4.2 -- Bylaws of the Company.(1)
- 4.3 -- Rights Agreement between the Registrant and Rights Agent, dated June 16, 1995.(1)
- 5.1 -- Opinion of Crouch & Hallett, L.L.P.(2)
- 23.1 -- Consent of Ernst & Young LLP(2)
- 23.2 -- Consent of Crouch & Hallett, L.L.P. (included in Exhibit 5.1).
- 27.1 -- Financial Data Schedule.(2)

-----

(1) Filed as an Exhibit to the registrant's Form 10-Q for the 13-week period ended April 30, 1995 and incorporated herein by reference.

(2) Filed herewith.

## ITEM 17. UNDERTAKINGS.

## (a) Filings Incorporating Subsequent Exchange Act Documents by Reference

The registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Company's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

## (b) Indemnification for Liability under the Securities Act of 1933

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.

## (c) Registration Statement Permitted by Rule 430A

The registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus 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.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Dallas and State of Texas on the 10th day of September, 1997.

DAVE & BUSTER'S, INC.

By /s/ CHARLES MICHEL

-----  
Charles Michel, Vice President and  
Chief Financial Officer

## POWER OF ATTORNEY

Each of the undersigned hereby appoints Charles Michel and Alan L. Murray, and each of them (with full power to act alone), as attorneys and agents for the undersigned, with full power of substitution, for and in the name, place and stead of the undersigned, to sign and file with the Securities and Exchange Commission under the Securities Act of 1933 any and all amendments and exhibits to this Registration Statement and any and all applications, instruments and other documents to be filed with the Securities and Exchange Commission pertaining to the registration of the securities covered hereby, with full power and authority to do and perform any and all acts and things whatsoever requisite or desirable.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed below by the following persons in the capacities indicated on September 10, 1997.

## SIGNATURE

## TITLE

-----  
/s/ DAVID O. CORRIVEAU

-----  
David O. Corriveau

-----  
Co-Chairman of the Board, Co-Chief  
Executive Officer, President, and  
Director (Principal Executive Officer)

-----  
/s/ JAMES W. CORLEY

-----  
James W. Corley

-----  
Co-Chairman of the Board, Co-Chief  
Executive Officer, Chief Operating  
Officer and Director (Principal  
Executive Officer)

-----  
/s/ CHARLES MICHEL

-----  
Charles Michel

-----  
Vice President and Chief Financial  
Officer (Principal Financial and  
Accounting Officer)

-----  
Director

-----  
Allen J. Bernstein

-----  
/s/ PETER A. EDISON

-----  
Peter A. Edison

-----  
Director

-----  
Director

-----  
Walter S. Henrion

-----  
/s/ MARK A. LEVY

-----  
Mark A. Levy

-----  
Director



SIGNATURE

-----

TITLE

-----

/s/ ANDREW E. NEWMAN

Director

-----  
Andrew E. Newman

/s/ CHRISTOPHER C. MAGUIRE

Director

-----  
Christopher C. Maguire

/s/ MARK B. VITTERT

Director

-----  
Mark B. Vittert

## INDEX TO EXHIBITS

EXHIBIT  
NUMBER  
-----EXHIBIT  
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1.1	-- Proposed form of Underwriting Agreement.
5.1	-- Opinion of Crouch & Hallett, L.L.P.
23.1	-- Consent of Ernst & Young LLP.
27.1	-- Financial Data Schedule.

Draft

2,000,000 SHARES

DAVE & BUSTER'S, INC.

COMMON STOCK

UNDERWRITING AGREEMENT

DATED OCTOBER \_\_, 1997

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October \_\_, 1997

MONTGOMERY SECURITIES  
PAINWEBBER INCORPORATED  
PIPER JAFFRAY INC.  
c/o MONTGOMERY SECURITIES  
600 Montgomery Street  
San Francisco, California 94111

Ladies and Gentlemen:

INTRODUCTORY. Dave & Buster's, Inc., a Missouri corporation (the "Company"), proposes to issue and sell to the several underwriters named in Schedule A (the "Underwriters") an aggregate of 1,800,000 shares of its Common Stock, par value \$.01 per share (the "Common Stock"); and the Shareholders of the Company named in Schedule B (collectively, the "Selling Shareholders") severally propose to sell to the Underwriters an aggregate of 200,000 shares of Common Stock. The 1,800,000 shares of Common Stock to be sold by the Company and the 200,000 shares of Common Stock to be sold by the Selling Shareholders are collectively called the "Firm Common Shares." In addition, the Company has granted to the Underwriters an option to purchase up to an additional 300,000 shares (the "Optional Common Shares") of Common Stock, as provided in Section 2. The Firm Common Shares and, if and to the extent such option is exercised, the Optional Common Shares are collectively called the "Common Shares."

The Company has prepared and filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (File No. 333-[\_\_\_]), which contains a form of prospectus to be used in connection with the public offering and sale of the Common Shares. Such registration statement, as amended, including the financial statements, exhibits and schedules thereto, in the form in which it was declared effective by the Commission under the Securities Act of 1933 and the rules and regulations promulgated thereunder (collectively, the "Securities Act"), including all documents incorporated or deemed to be incorporated by reference therein and any information deemed to be a part thereof at the time of effectiveness pursuant to Rule 430A or Rule 434 under the Securities Act or the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder (collectively, the "Exchange Act"), is called the "Registration Statement." Any registration statement filed by the Company pursuant to Rule 462(b) under the Securities Act is called the "Rule 462(b) Registration Statement," and from and after the date and time of filing of the Rule 462(b) Registration Statement the term "Registration Statement" shall include the Rule 462(b) Registration Statement. Such prospectus, in the form first used by the Underwriters to confirm sales of the Common Shares, is called the "Prospectus"; provided, however, if the Company has, with the consent of Montgomery Securities, elected to rely upon Rule 434 under the Securities Act, the term "Prospectus" shall mean the Company's prospectus subject to completion (each, a "preliminary prospectus") dated [\_\_\_] (such preliminary prospectus is called the "Rule 434 preliminary prospectus"), together

with the applicable term sheet (the "Term Sheet") prepared and filed by the Company with the Commission under Rules 434 and 424(b) under the Securities Act and all references in this Agreement to the date of the Prospectus shall mean the date of the Term Sheet. All references in this Agreement to the Registration Statement, the Rule 462(b) Registration Statement, a preliminary prospectus, the Prospectus or the Term Sheet, or any amendments or supplements to any of the foregoing, shall include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System ("EDGAR"). All references in this Agreement to financial statements and schedules and other information which is "contained," "included" or "stated" in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is or is deemed to be incorporated by reference in the Registration Statement or the Prospectus, as the case may be; and all references in this Agreement to amendments or supplements to the Registration Statement or the Prospectus shall be deemed to mean and include the filing of any document under the Exchange Act which is or is deemed to be incorporated by reference in the Registration Statement or the Prospectus, as the case may be.

The Company and each of the Selling Shareholders hereby confirm their respective agreements with the Underwriters as follows:

#### SECTION 1. REPRESENTATIONS AND WARRANTIES.

A. REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE SELLING SHAREHOLDERS. The Company and each of the Selling Shareholders hereby represent, warrant and covenant to each Underwriter as follows:

(a) Compliance with Registration Requirements. The Registration Statement and any Rule 462(b) Registration Statement have been declared effective by the Commission under the Securities Act. The Company has complied to the Commission's satisfaction with all requests of the Commission for additional or supplemental information. No stop order suspending the effectiveness of the Registration Statement or any Rule 462(b) Registration Statement is in effect and no proceedings for such purpose have been instituted or are pending or, to the best knowledge of the Company, are contemplated or threatened by the Commission.

Each preliminary prospectus and the Prospectus when filed complied in all material respects with the Securities Act and, if filed by electronic transmission pursuant to EDGAR (except as may be permitted by Regulation S-T under the Securities Act), was identical to the copy thereof delivered to the Underwriters for use in connection with the offer and sale of the Common Shares. Each of the Registration Statement, any Rule 462(b) Registration Statement and any post-effective amendment thereto, at the time it became effective and at all subsequent times, complied and will comply in all material respects with the Securities Act 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 to make the statements therein not misleading. The Prospectus, as amended or supplemented, as of its date and at all subsequent times, did not and 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. The representations and warranties set forth in the two immediately preceding sentences do not apply to statements in



or omissions from the Registration Statement, any Rule 462(b) Registration Statement, or any post-effective amendment thereto, or the Prospectus, or any amendments or supplements thereto, made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by the Underwriters expressly for use therein. There are no contracts or other documents required to be described in the Prospectus or to be filed as exhibits to the Registration Statement which have not been described or filed as required.

(b) Offering Materials Furnished to Underwriters. The Company has delivered to each Underwriter one complete manually signed copy of the Registration Statement and of each consent and certificate of experts filed as a part thereof, and conformed copies of the Registration Statement (without exhibits) and preliminary prospectuses and the Prospectus, as amended or supplemented, in such quantities and at such places as the Underwriters have reasonably requested for each of the Underwriters.

(c) Distribution of Offering Material by the Company. The Company has not distributed and will not distribute, prior to the later of the Second Closing Date (as defined below) and the completion of the Underwriters' distribution of the Common Shares, any offering material in connection with the offering and sale of the Common Shares other than a preliminary prospectus, the Prospectus or the Registration Statement.

(d) The Underwriting Agreement. This Agreement has been duly authorized, executed and delivered by, and is a valid and binding agreement of, the Company, enforceable in accordance with its terms, except as rights to indemnification hereunder may be limited by applicable law and except as the enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles.

(e) Authorization of the Common Shares. The Common Shares to be purchased by the Underwriters from the Company have been duly authorized for issuance and sale pursuant to this Agreement and, when issued and delivered by the Company pursuant to this Agreement, will be validly issued, fully paid and nonassessable.

(f) No Applicable Registration or Other Similar Rights. There are no persons with registration or other similar rights to have any equity or debt securities registered for sale under the Registration Statement or included in the offering contemplated by this Agreement.

(g) No Material Adverse Change. Except as otherwise disclosed in the Prospectus, subsequent to the respective dates as of which information is given in the Prospectus: (i) there has been no material adverse change, or any development that could reasonably be expected to result in a material adverse change, in the condition, financial or otherwise, or in the earnings, business, operations or prospects, whether or not arising from transactions in the ordinary course of business, of the Company and its subsidiaries, considered as one entity (any such change is called a "Material Adverse Change"); (ii) the Company and its subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, not in the ordinary course of business nor entered into any material transaction or agreement not in the ordinary course of business; and (iii) there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or other subsidiaries, any of its subsidiaries on any

class of capital stock or repurchase or redemption by the Company or any of its subsidiaries of any class of capital stock.

(h) Independent Accountants. Ernst & Young LLP, independent auditors, who have expressed their opinion with respect to the financial statements (which term as used in this Agreement includes the related notes thereto) filed with the Commission as a part of the Registration Statement and included in the Prospectus, are independent public or certified public accountants as required by the Securities Act and the Exchange Act.

(i) Preparation of the Financial Statements. The financial statements filed with the Commission as a part of the Registration Statement and included in the Prospectus present fairly the consolidated financial position of the Company and its subsidiaries as of and at the dates indicated and the results of their operations and cash flows for the periods specified. Such financial statements have been prepared in conformity with generally accepted accounting principles as applied in the United States applied on a consistent basis throughout the periods involved, except as may be expressly stated in the related notes thereto. No other financial statements or supporting schedules are required to be included in the Registration Statement. The financial data set forth in the Prospectus under the captions "Prospectus Summary--Summary of Selected Historical Consolidated Financial and Operating Data," "Selected Consolidated Financial Data" and "Capitalization" fairly present the information set forth therein on a basis consistent with that of the audited financial statements contained in the Registration Statement.

(j) Incorporation and Good Standing of the Company and its Subsidiaries. Each of the Company and its subsidiaries has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation and has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and, in the case of the Company, to enter into and perform its obligations under this Agreement. Each of the Company and each subsidiary is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required (including, with respect to the Company and Dave & Buster's I, L.P., the State of Texas) whether by reason of the ownership or leasing of property or the conduct of business, except for such jurisdictions (other than the State of Texas, with respect to the Company and Dave & Buster's I, L.P.) where the failure to so qualify or to be in good standing would not, individually or in the aggregate, result in a Material Adverse Change. All of the issued and outstanding capital stock of each subsidiary has been duly authorized and validly issued, is fully paid and nonassessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance or claim. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Exhibit 22 to the Company's Annual Report on Form 10-K for the fiscal year ended February 2, 1997.

(k) Capitalization and Other Capital Stock Matters. The authorized, issued and outstanding capital stock of the Company is as set forth in the Prospectus under the caption "Capitalization" (other than for subsequent issuances, if any, pursuant to employee benefit plans described in the Prospectus or upon exercise of outstanding options described in the Prospectus). The Common Stock (including the Common Shares) conforms in all material respects to the description thereof contained in the Prospectus. All of the issued and outstanding shares of Common Stock (including the shares of Common Stock owned by Selling Shareholders) have been duly authorized and validly issued, are fully paid and nonassessable and have been issued in compliance with federal and state securities laws. None of the outstanding shares of Common Stock were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its subsidiaries other than those accurately described in the Prospectus. The description of the Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the Prospectus accurately and fairly presents the information required to be shown with respect to such plans, arrangements, options and rights.

(l) Stock Exchange Listing. The Common Stock (including the Common Shares) is registered pursuant to Section 12(g) of the Exchange Act and is listed on the Nasdaq National Market, and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the Nasdaq National Market, nor has the Company received any notification that the Commission or the National Association of Securities Dealers, Inc. (the "NASD") is contemplating terminating such registration or listing.

(m) Non-contravention of Existing Instruments; No Further Authorizations or Approvals Required. Neither the Company nor any of its subsidiaries is in violation of its charter or by-laws or is in default (or, with the giving of notice or lapse of time, would be in default) ("Default") under any indenture, mortgage, loan or credit agreement, note, contract, franchise, lease or other instrument to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound (including, without limitation, the Company's Revolving Credit Facility with Texas Commerce Bank National Association, as agent), or to which any of the property or assets of the Company or any of its subsidiaries is subject (each, an "Existing Instrument"), except for such Defaults as would not, individually or in the aggregate, result in a Material Adverse Change. The Company's execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby and by the Prospectus (i) have been duly authorized by all necessary corporate action and will not result in any violation of the provisions of the charter or by-laws of the Company or any subsidiary, (ii) will not conflict with or constitute a breach of, or Default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, or require the consent of any other part to, any Existing Instrument, except for such conflicts, breaches, Defaults, liens, charges or encumbrances as would not, individually or in the aggregate, result in a Material Adverse Change and (iii) will not result in any violation of any law, administrative regulation or administrative or court decree applicable to the Company or any subsidiary. No consent, approval, authorization or other order of, or registration or filing with, any court or other

governmental or regulatory authority or agency, is required for the Company's execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby and by the Prospectus, except such as have been obtained or made by the Company and are in full force and effect under the Securities Act, applicable state securities or blue sky laws and from the NASD.

(n) No Material Actions or Proceedings. Except as otherwise disclosed in the Prospectus, there are no legal or governmental actions, suits or proceedings pending or, to the best of the Company's knowledge, threatened (i) against or affecting the Company or any of its subsidiaries, (ii) which has as the subject thereof any officer or director of, or property owned or leased by, the Company or any of its subsidiaries or (iii) relating to environmental or discrimination matters, where in any such case (A) there is a reasonable possibility that such action, suit or proceeding might be determined adversely to the Company or such subsidiary and (B) any such action, suit or proceeding, if so determined adversely, would reasonably be expected to result in a Material Adverse Change or adversely affect the consummation of the transactions contemplated by this Agreement. No material labor dispute with the employees of the Company or any of its subsidiaries exists or, to the best of the Company's knowledge, is threatened or imminent.

(o) Intellectual Property Rights. The Company and its subsidiaries own or possess sufficient trademarks, trade names, patent rights, copyrights, licenses, approvals, trade secrets and other similar rights (collectively, "Intellectual Property Rights") reasonably necessary to conduct their businesses as now conducted; and the expected expiration of any of such Intellectual Property Rights would not result in a Material Adverse Change. Neither the Company nor any of its subsidiaries has received any notice of infringement or conflict with asserted Intellectual Property Rights of others, which infringement or conflict, if the subject of an unfavorable decision, would result in a Material Adverse Change.

(p) All Necessary Permits, etc. The Company and each subsidiary possess such valid and current certificates, authorizations or permits issued by the appropriate state, federal or foreign regulatory agencies or bodies necessary to conduct their respective businesses, and neither the Company nor any subsidiary has received any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, could result in a Material Adverse Change.

(q) Title to Properties. The Company and each of its subsidiaries has good and marketable title to all the properties and assets reflected as owned in the financial statements referred to in Section 1(A) (i) above (or elsewhere in the Prospectus), in each case free and clear of any security interests, mortgages, liens, encumbrances, equities, claims and other defects, except such as do not materially and adversely affect the value of such property and do not materially interfere with the use made or proposed to be made of such property by the Company or such subsidiary. The real property, improvements, equipment and personal property held under lease by the Company or any subsidiary are held under valid and enforceable leases, with such exceptions as are not material and do not materially interfere with the use made or proposed to be made of such real property, improvements, equipment or personal property by the Company or such subsidiary.

(r) Tax Law Compliance. The Company and its subsidiaries have filed all necessary federal, state and foreign income and franchise tax returns and have paid all taxes required to be paid by any of them and, if due and payable, any related or similar assessment, fine or penalty levied against any of them, except in instances where failure to so act would not materially and adversely affect the business, operations or properties of the Company and its subsidiaries. The Company has made adequate charges, accruals and reserves in the applicable financial statements referred to in Section 1 (A) (i) above in respect of all federal, state and foreign income and franchise taxes for all periods as to which the tax liability of the Company or any of its subsidiaries has not been finally determined.

(s) Company Not an "Investment Company." The Company has been advised of the rules and requirements under the Investment Company Act of 1940, as amended (the "Investment Company Act"). The Company is not, and after receipt of payment for the Common Shares will not be, an "investment company" within the meaning of Investment Company Act and will conduct its business in a manner so that it will not become subject to the Investment Company Act.

(t) Insurance. Each of the Company and its subsidiaries are insured by recognized, financially sound and reputable institutions with policies in such amounts and with such deductibles and covering such risks as are generally deemed adequate and customary for their businesses including, but not limited to, policies covering real and personal property owned or leased by the Company and its subsidiaries against theft, damage, destruction, acts of vandalism and earthquakes. The Company has no reason to believe that it or any subsidiary will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Change. Neither of the Company nor any subsidiary has been denied any insurance coverage which it has sought or for which it has applied.

(u) No Price Stabilization or Manipulation. The Company has not taken and will not take, directly or indirectly, any action designed to or that might be reasonably expected to cause or result in stabilization or manipulation of the price of the Common Stock to facilitate the sale or resale of the Common Shares.

(v) Related Party Transactions. There are no business relationships or related-party transactions involving the Company or any subsidiary or any other person required to be described in the Prospectus which have not been described as required.

(w) No Unlawful Contributions or Other Payments. Neither the Company nor any of its subsidiaries (it being understood that such subsidiaries only include those entities that have been subsidiaries of the Company at any time subsequent to the June 29, 1995 spin-off of the Company) nor, to the best of the Company's knowledge, any employee or agent of the Company or any such subsidiary, has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office in violation of any law or of the character required to be disclosed in the Prospectus.

(x) Exchange Act Compliance. The documents incorporated or deemed to be incorporated by reference in the Prospectus, at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the Exchange Act, and, when read together with the other information in the Prospectus, at the time the Registration Statement and any amendments thereto become effective and at the First Closing Date and the Second Closing Date, as the case may be, will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the facts required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(y) Company's Accounting System. The Company maintains a system of accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles as applied in the United States and to maintain accountability for assets; (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 existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(z) ERISA Compliance. The Company and its subsidiaries and any "employee benefit plan" (as defined under the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, "ERISA")) established or maintained by the Company, its subsidiaries or their "ERISA Affiliates" (as defined below) are in compliance in all material respects with ERISA. "ERISA Affiliate" means, with respect to the Company or a subsidiary, any member of any group of organizations described in Sections 414(b),(c),(m) or (o) of the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (the "Code") of which the Company or such subsidiary is a member. No "reportable event" (as defined under ERISA) has occurred or is reasonably expected to occur with respect to any "employee benefit plan" established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates. No "employee benefit plan" established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates, if such "employee benefit plan" were terminated, would have any "amount of unfunded benefit liabilities" (as defined under ERISA). Neither the Company, its subsidiaries nor any of their ERISA Affiliates has incurred or reasonably expects to incur any liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan" or (ii) Sections 412, 4971, 4975 or 4980B of the Code. Each "employee benefit plan" established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would cause the loss of such qualification.

Any certificate signed by an officer of the Company and delivered to the Underwriters or to counsel for the Underwriters shall be deemed to be a representation and warranty by the Company to each Underwriter as to the matters set forth therein.

B. REPRESENTATIONS AND WARRANTIES OF THE SELLING SHAREHOLDERS. In addition to the representations, warranties and covenants set forth in Section 1(A), each Selling Shareholder represents, warrants and covenants to each Underwriter as follows:

(a) The Underwriting Agreement. This Agreement has been duly authorized, executed and delivered by or on behalf of such Selling Shareholder and is a valid and binding agreement of such Selling Shareholder, enforceable in accordance with its terms, except as rights to indemnification hereunder may be limited by applicable law and except as the enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles.

(b) The Custody Agreement and Power of Attorney. Each of the (i) Custody Agreement signed by such Selling Shareholder and [\_\_\_], as custodian (the "Custodian"), relating to the deposit of the Common Shares to be sold by such Selling Shareholder (the "Custody Agreement") and (ii) Power of Attorney appointing certain individuals named therein as such Selling Shareholder's attorneys-in-fact (each, an "Attorney-in-Fact") to the extent set forth therein relating to the transactions contemplated hereby and by the Prospectus (the "Power of Attorney"), of such Selling Shareholder has been duly authorized, executed and delivered by such Selling Shareholder and is a valid and binding agreement of such Selling Shareholder, enforceable in accordance with its terms, except as rights to indemnification thereunder may be limited by applicable law and except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles.

(c) Title to Common Shares to be Sold; All Authorizations Obtained. Such Selling Shareholder has, and on the First Closing Date and the Second Closing Date (as defined below) will have, good and valid title to all of the Common Shares which may be sold by such Selling Shareholder pursuant to this Agreement on such date and the legal right and power, and all authorizations and approvals required by law, to enter into this Agreement and its Custody Agreement and Power of Attorney, to sell, transfer and deliver all of the Common Shares which may be sold by such Selling Shareholder pursuant to this Agreement and to comply with its other obligations hereunder and thereunder.

(d) Delivery of the Common Shares to be Sold. Delivery of the Common Shares which are sold by such Selling Shareholder pursuant to this Agreement will pass good and valid title to such Common Shares, free and clear of any security interest, mortgage, pledge, lien, encumbrance or other claim.

(e) Non-contravention; No Further Authorizations or Approvals Required. The execution and delivery by such Selling Shareholder of, and the performance by such Selling Shareholder of its obligations under, this Agreement, the Custody Agreement and the Power of Attorney will not contravene or conflict with, result in a breach of, or constitute a Default under, or require the consent of any other party to, any agreement or instrument to which such Selling Shareholder is a party or by which it is bound or under which it is entitled to any right or benefit, any provision of applicable law or any judgment, order, decree or regulation applicable to such Selling Shareholder of any court, regulatory body, administrative agency, governmental body or arbitrator having jurisdiction over such Selling Shareholder. No consent, approval, authorization or other order of, or registration or filing with, any court or other governmental authority or agency, is required for the consummation by such Selling Shareholder of the transactions contemplated in this Agreement, except such as have been obtained or made and are in full force and effect under the Securities Act, applicable state securities or blue sky laws and from the NASD.

(f) No Registration or Other Similar Rights. Such Selling Shareholder does not have any registration or other similar rights to have any equity or debt securities registered for sale by the Company under the Registration Statement or included in the offering contemplated by this Agreement.

(g) No Further Consents, etc. No consent, approval or waiver is required under any instrument or agreement to which such Selling Shareholder is a party or by which it is bound or under which it is entitled to any right or benefit, in connection with the offering, sale or purchase by the Underwriters of any of the Common Shares which may be sold by such Selling Shareholder under this Agreement or the consummation by such Selling Shareholder of any of the other transactions contemplated hereby.

(h) Disclosure Made by Such Selling Shareholder in the Prospectus. All information furnished by or on behalf of such Selling Shareholder in writing expressly for use in the Registration Statement and Prospectus is, and on the First Closing Date and the Second Closing Date will be, true, correct, and complete in all material respects, and does not, and on the First Closing Date and the Second Closing Date will not, contain any untrue statement of a material fact or omit to state any material fact necessary to make such information not misleading. Such Selling Shareholder confirms as accurate the number of shares of Common Stock set forth opposite such Selling Shareholder's name in the Prospectus under the caption "Selling Stockholders" (both prior to and after giving effect to the sale of the Common Shares).

(i) No Price Stabilization or Manipulation. Such Selling Shareholder has not taken and will not take, directly or indirectly, any action designed to stabilize or manipulate the price of the Common Stock, or that might be reasonably expected to cause or result in stabilization or manipulation of the price of the Common Stock, to facilitate the sale or resale of the Common Shares.



Any certificate signed by or on behalf of any Selling Shareholder and delivered to the Underwriters or to counsel for the Underwriters shall be deemed to be a representation and warranty by such Selling Shareholder to each Underwriter as to the matters covered thereby.

SECTION 2. PURCHASE, SALE AND DELIVERY OF THE COMMON SHARES.

The Firm Common Shares. Upon the terms herein set forth, (i) the Company agrees to issue and sell to the several Underwriters an aggregate of 1,800,000 Firm Common Shares and (ii) the Selling Shareholders agree to sell to the several Underwriters an aggregate of 200,000 Firm Common Shares, each Selling Shareholder selling the number of Firm Common Shares set forth opposite such Selling Shareholder's name on Schedule B. On the basis of the representations, warranties and agreements herein contained, and upon the terms but subject to the conditions herein set forth, the Underwriters agree, severally and not jointly, to purchase from the Company and the Selling Shareholders the respective number of Firm Common Shares set forth opposite their names on Schedule A. The purchase price per Firm Common Share to be paid by the several Underwriters to the Company and the Selling Shareholders shall be \$[ ] per share.

The First Closing Date. Delivery of certificates for the Firm Common Shares to be purchased by the Underwriters and payment therefor shall be made at the offices of Montgomery Securities, 600 Montgomery Street, San Francisco, California (or such other place as may be agreed to by the Company and the Underwriters) at 6:00 a.m. San Francisco time, on [ ], or such other time and date not later than 10:30 a.m. San Francisco time, on [ ] (1) as the Underwriters shall designate by notice to the Company (the time and date of such closing are called the "First Closing Date"). The Company and the Selling Shareholders hereby acknowledge that circumstances under which the Underwriters may provide notice to postpone the First Closing Date as originally scheduled include, but are in no way limited to, any determination by the Company, the Selling Shareholders or the Underwriters to recirculate to the public copies of an amended or supplemented Prospectus or a delay as contemplated by the provisions of Section 10.

The Optional Common Shares; The Second Closing Date. In addition, on the basis of the representations, warranties and agreements herein contained, and upon the terms but subject to the conditions herein set forth, the Company hereby grants an option to the several Underwriters to purchase, severally and not jointly, up to an aggregate of 300,000 Optional Common Shares from the Company at the purchase price per share to be paid by the Underwriters for the Firm Common Shares. The option granted hereunder is for use by the Underwriters solely in covering any over-allotments in connection with the sale and distribution of the Firm Common Shares. The option granted hereunder may be exercised at any time (but not more than once) upon notice by the Underwriters to the Company, which notice may be given at any time within 30 days from the date of this Agreement. Such notice shall set forth (i) the aggregate number of Optional Common Shares as to which the Underwriters are exercising the option, (ii) the names and denominations in which the certificates for the Optional Common Shares are to be registered and (iii) the time, date and place at which such certificates will be delivered (which time and date may be simultaneous with, but not earlier than, the First Closing Date; and in such case the term

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(1) Insert a date ten business days following the original contemplated First Closing Date.

"First Closing Date" shall refer to the time and date of delivery of certificates for the Firm Common Shares and the Optional Common Shares). Such time and date of delivery, if subsequent to the First Closing Date, is called the "Second Closing Date" and shall be determined by the Underwriters and shall not be earlier than three nor later than five full business days after delivery of such notice of exercise. If any Optional Common Shares are to be purchased, each Underwriter agrees, severally and not jointly, to purchase the number of Optional Common Shares (subject to such adjustments to eliminate fractional shares as the Underwriters may determine) that bears the same proportion to the total number of Optional Common Shares to be purchased as the number of Firm Common Shares set forth on Schedule A opposite the name of such Underwriter bears to the total number of Firm Common Shares, and the Company agrees to sell such Optional Common Shares. The Underwriters may cancel the option at any time prior to its expiration by giving written notice of such cancellation to the Company.

Public Offering of the Common Shares. The Underwriters hereby advise the Company and the Selling Shareholders that the Underwriters intend to offer for sale to the public, as described in the Prospectus, their respective portions of the Common Shares as soon after this Agreement has been executed and the Registration Statement has been declared effective as the Underwriters, in their sole judgment, have determined is advisable and practicable.

Payment for the Common Shares. Payment for the Common Shares to be sold by the Company shall be made at the First Closing Date (and, if applicable, at the Second Closing Date) by wire transfer of immediately available funds to the order of the Company. Payment for the Common Shares to be sold by the Selling Shareholders shall be made at the First Closing Date (and, if applicable, at the Second Closing Date) by wire transfer of immediately available funds to the order of the Custodian.

Montgomery Securities, individually and not as the representative of the Underwriters, may (but shall not be obligated to) make payment for any Common Shares to be purchased by any Underwriter whose funds shall not have been received by Montgomery Securities by the First Closing Date or the Second Closing Date, as the case may be, for the account of such Underwriter, but any such payment shall not relieve such Underwriter from any of its obligations under this Agreement.

Each Selling Shareholder hereby agrees that (i) it will pay all stock transfer taxes, stamp duties and other similar taxes, if any, payable upon the sale or delivery of the Common Shares to be sold by such Selling Shareholder to the several Underwriters, or otherwise in connection with the performance of such Selling Shareholder's obligations hereunder and (ii) the Custodian is authorized to deduct for such payment any such amounts from the proceeds to such Selling Shareholder hereunder and to hold such amounts for the account of such Selling Shareholder with the Custodian under the Custody Agreement.

Delivery of the Common Shares. The Company and the Selling Shareholders shall deliver, or cause to be delivered, to the Underwriters certificates for the Firm Common Shares to be sold by them at the First Closing Date, against the irrevocable release of a wire transfer of immediately available funds for the amount of the purchase price therefor. The Company shall also deliver, or cause to be delivered, to the Underwriters certificates for the Optional Common Shares the Underwriters have agreed to purchase at the First Closing Date or the Second Closing Date, as the case may be, against the irrevocable release of a wire transfer of immediately available funds for the amount of the purchase price therefor. The certificates for the Common Shares shall be in definitive form and registered in such names and denominations as the Underwriters shall have requested at least two full business days prior to the First Closing Date (or the Second Closing Date, as the case may be) and shall be made available for inspection on the business day preceding the First Closing Date (or the Second Closing Date, as the case may be) at a location in New York City as the Underwriters may designate. Time shall be of the essence, and delivery at the time and place specified in this Agreement is a further condition to the obligations of the Underwriters.

Delivery of Prospectus to the Underwriters. Not later than 12:00 p.m. on the second business day following the date the Common Shares are released by the Underwriters for sale to the public, the Company shall delivery or cause to be delivered copies of the Prospectus in such quantities and at such places as the Underwriters shall request.

### SECTION 3. ADDITIONAL COVENANTS.

A. COVENANTS OF THE COMPANY. The Company further covenants and agrees with each Underwriter as follows:

(a) Underwriter's Review of Proposed Amendments and Supplements. During such period beginning on the date hereof and ending on the later of the First Closing Date or such date, as in the opinion of counsel for the Underwriters, the Prospectus is no longer required by law to be delivered in connection with sales by an Underwriter or dealer (the "Prospectus Delivery Period"), prior to amending or supplementing the Registration Statement (including any registration statement filed under Rule 462(b) under the Securities Act) or the Prospectus (including any amendment or supplement through incorporation by reference of any report filed under the Exchange Act), the Company shall furnish to the Underwriters for review copies of each such proposed amendment or supplement, and the Company shall not file any such proposed amendment or supplement to which the Underwriters reasonably object.

(b) Securities Act Compliance. After the date of this Agreement, the Company shall promptly advise the Underwriters in writing (i) of the receipt of any comments of, or requests for additional or supplemental information from, the Commission, (ii) of the time and date of any filing of any post-effective amendment to the Registration Statement or any amendment or supplement to any preliminary prospectus or the Prospectus, (iii) of the time and date that any post-effective amendment to the Registration Statement becomes effective and (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto or of any order preventing or suspending the use of any preliminary prospectus or the Prospectus, or of any proceedings to remove, suspend or terminate from listing or quotation the Common Stock from any securities exchange upon which it is listed for trading or included or designated for

quotation, or of the threatening or initiation of any proceedings for any of such purposes. If the Commission shall enter any such stop order at any time, the Company will use its best efforts to obtain the lifting of such order at the earliest possible moment. Additionally, the Company agrees that it shall comply with the provisions of Rules 424(b), 430A and 434, as applicable, under the Securities Act and will use its reasonable efforts to confirm that any filings made by the Company under such Rule 424(b) were received in a timely manner by the Commission.

(c) Amendments and Supplements to the Prospectus and Other Securities Act Matters. If, during the Prospectus Delivery Period, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not misleading, or if in the opinion of the Underwriters or counsel for the Underwriters it is otherwise necessary to amend or supplement the Prospectus to comply with law, the Company agrees to promptly prepare (subject to Section 3(A)(a) hereof), file with the Commission and furnish at its own expense to the Underwriters and to dealers, amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances when the Prospectus is delivered to a purchaser, be misleading or so that the Prospectus, as amended or supplemented, will comply with law.

(d) Copies of Any Amendments and Supplements to the Prospectus. The Company agrees to furnish the Underwriters, without charge, during the Prospectus Delivery Period, as many copies of the Prospectus and any amendments and supplements thereto (including any documents incorporated or deemed incorporated by reference therein) as the Underwriters may request.

(e) Blue Sky Compliance. The Company shall cooperate with the Underwriters and counsel for the Underwriters to qualify or register the Common Shares for sale under (or obtain exemptions from the application of) the Blue Sky or state securities laws of those jurisdictions designated by the Underwriters, shall comply with such laws and shall continue such qualifications, registrations and exemptions in effect so long as required for the distribution of the Common Shares. The Company shall not be required to qualify as a foreign corporation or to take any action that would subject it to general service of process in any such jurisdiction where it is not presently qualified or where it would be subject to taxation as a foreign corporation. The Company will advise the Underwriters promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Common Shares for offering, sale or trading in any jurisdiction or any initiation or threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, the Company shall use its best efforts to obtain the withdrawal thereof at the earliest possible moment.

(f) Use of Proceeds. The Company shall apply the net proceeds from the sale of the Common Shares sold by it in the manner described under the caption "Use of Proceeds" in the Prospectus.

(g) Transfer Agent. The Company shall engage and maintain, at its expense, a registrar and transfer agent for the Common Stock.

(h) Earnings Statement. As soon as practicable, the Company will make generally available to its security holders and to the Underwriters an earnings statement (which need not be audited) covering the twelve-month period ending [\_\_\_\_](2) that satisfies the provisions of Section 11(a) of the Securities Act.

(i) Periodic Reporting Obligations. During the Prospectus Delivery Period the Company shall file, on a timely basis, with the Commission and the Nasdaq National Market all reports and documents required to be filed under the Exchange Act. Additionally, the Company shall file with the Commission all reports on Form SR as may be required under Rule 463 under the Securities Act.

(j) Agreement Not to Offer or Sell Additional Securities. During the period of 90 days following the date of the Prospectus, the Company will not, without the prior written consent of Montgomery Securities (which consent may be withheld at the sole discretion of Montgomery Securities), directly or indirectly, issue, sell, offer, contract or grant any option to sell, pledge, transfer or establish an open "put equivalent position" within the meaning of Rule 16a-1(h) under the Exchange Act, or otherwise dispose of or transfer, or announce the offering of, or file any registration statement under the Securities Act in respect of, any shares of Common Stock, options or warrants to acquire shares of the Common Stock or securities exchangeable or exercisable for or convertible into shares of Common Stock (other than as contemplated by this Agreement with respect to the Common Shares); provided, however, that the Company may issue shares of its Common Stock or options to purchase its Common Stock, or Common Stock upon exercise of options, pursuant to any stock option, stock bonus or other stock plan or arrangement described in the Prospectus.

(k) Future Reports to the Underwriters. During the period of five years hereafter the Company will furnish to the Underwriters at 600 Montgomery Street, San Francisco, CA 94111 Attention:[\_\_\_\_]: (i) as soon as practicable after the end of each fiscal year, copies of the Annual Report of the Company containing the balance sheet of the Company as of the close of such fiscal year and statements of income, Shareholders' equity and cash flows for the year then ended and the opinion thereon of the Company's independent public or certified public accountants; (ii) as soon as practicable after the filing thereof, copies of each proxy statement, Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other report filed by the Company with the Commission, the NASD or any securities exchange; and (iii) as soon as available, copies of any report or communication of the Company mailed generally to holders of its capital stock.

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(2) Insert the date of the end of the Company's first quarter ending after one year following the effective date of the Registration Statement (as defined in Rule 158(c) under the Securities Act).

(1) Exchange Act Compliance. During the Prospectus Delivery Period, the Company will file all documents required to be filed with the Commission pursuant to Section 13, 14 or 15 of the Exchange Act in the manner and within the time periods required by the Exchange Act.

B. COVENANTS OF THE SELLING SHAREHOLDERS. Each Selling Shareholder further covenants and agrees with each Underwriter:

(a) Agreement Not to Offer or Sell Additional Securities. Such Selling Shareholder will not, without the prior written consent of Montgomery (which consent may be withheld in its sole discretion), directly or indirectly, sell, offer, contract or grant any option to sell (including without limitation any short sale), pledge, transfer, establish an open "put equivalent position" within the meaning of Rule 16a-1(h) under the Exchange Act, or otherwise dispose of any shares of Common Stock, options or warrants to acquire shares of Common Stock, or securities exchangeable or exercisable prior to or convertible into shares of Common Stock currently or hereafter owned either of record or beneficially (as defined in Rule 13d-3 under Securities Exchange Act of 1934, as amended) by the undersigned, or publicly announce the undersigned's intention to do any of the foregoing, for a period commencing on the date hereof and continuing through the close of trading on the date 90 days after the date of the Prospectus.

(b) Delivery of Forms W-9. To deliver to the Underwriters prior to the First Closing Date a properly completed and executed United States Treasury Department Form W-9.

Montgomery Securities, on behalf of the several Underwriters, may, in its sole discretion, waive in writing the performance by the Company or any Selling Shareholder of any one or more of the foregoing covenants or extend the time for their performance.

SECTION 4. PAYMENT OF EXPENSES. The Company agrees to pay all costs, fees and expenses incurred in connection with the performance of their obligations hereunder and in connection with the transactions contemplated hereby, including without limitation (i) all expenses incident to the issuance and delivery of the Common Shares (including all printing and engraving costs), (ii) all fees and expenses of the registrar and transfer agent of the Common Stock, (iii) all necessary issue, transfer and other stamp taxes in connection with the issuance and sale of the Common Shares to the Underwriters, (iv) all fees and expenses of the Company's counsel, independent public or certified public accountants and other advisors, (v) all costs and expenses incurred in connection with the preparation, printing, filing, shipping and distribution of the Registration Statement (including financial statements, exhibits, schedules, consents and certificates of experts), each preliminary prospectus and the Prospectus, and all amendments and supplements thereto, and this Agreement, (vi) all filing fees, attorneys' fees and expenses incurred by the Company or the Underwriters in connection with qualifying or registering (or obtaining exemptions from the qualification or registration of) all or any part of the Common Shares for offer and sale under the Blue Sky laws, and, if requested by the Underwriters, preparing and printing a "Blue Sky Survey" or memorandum, and any supplements thereto, advising the Underwriters of such qualifications, registrations and exemptions, (vii) the filing fees incident to, and the reasonable fees and expenses of counsel for the Underwriters in

connection with, the NASD's review and approval of the Underwriters' participation in the offering and distribution of the Common Shares, (viii) the fees and expenses associated with including the Common Shares on the Nasdaq National Market, and (ix) all other fees, costs and expenses referred to in Item 14 of Part II of the Registration Statement. Except as provided in this Section 4, Section 6, Section 8 and Section 9 hereof, the Underwriters shall pay their own expenses, including the fees and disbursements of their counsel.

The Selling Shareholders further agree with each Underwriter to pay (directly or by reimbursement) all fees and expenses incident to the performance of their obligations under this Agreement which are not otherwise specifically provided for herein, including but not limited to (i) fees and expenses of counsel and other advisors for such Selling Shareholders (ii) fees and expenses of the Custodian and (iii) expenses and taxes incident to the sale and delivery of the Common Shares to be sold by such Selling Shareholders to the Underwriters hereunder (which taxes, if any, may be deducted by the Custodian under the provisions of Section 2 of this Agreement).

This Section 4 shall not affect or modify any separate, valid agreement relating to the allocation of payment of expenses between the Company, on the one hand, and the Selling Shareholders, on the other hand.

**SECTION 5. CONDITIONS OF THE OBLIGATIONS OF THE UNDERWRITERS.** The obligations of the several Underwriters to purchase and pay for the Common Shares as provided herein on the First Closing Date and, with respect to the Optional Common Shares, the Second Closing Date, shall be subject to the accuracy of the representations and warranties on the part of the Company and the Selling Shareholders set forth in Sections 1(A) and 1(B) hereof as of the date hereof and as of the First Closing Date as though then made and, with respect to the Optional Common Shares, as of the Second Closing Date as though then made, to the timely performance by the Company and the Selling Shareholders of their respective covenants and other obligations hereunder, and to each of the following additional conditions:

(a) Accountants' Comfort Letter. On the date hereof, the Underwriters shall have received from Ernst & Young LLP, independent public or certified public accountants for the Company, a letter dated the date hereof addressed to the Underwriters, in form and substance satisfactory to the Underwriters, containing statements and information of the type ordinarily included in accountant's "comfort letters" to underwriters, delivered according to Statement of Auditing Standards No. 72 (or any successor bulletin), with respect to the audited and unaudited financial statements and certain financial information contained in the Registration Statement and the Prospectus (and the Underwriters shall have received additional conformed copies of such accountants' letter for each of the several Underwriters).

(b) Compliance with Registration Requirements; No Stop Order; No Objection from NASD. For the period from and after effectiveness of this Agreement and prior to the First Closing Date and, with respect to the Optional Common Shares, the Second Closing Date:

(i) the Company shall have filed the Prospectus with the Commission (including the information required by Rule 430A under the Securities Act) in the manner and within the time period required by Rule 424(b) under the Securities Act; or the Company shall have filed a post-effective amendment to the Registration Statement

containing the information required by such Rule 430A, and such post-effective amendment shall have become effective; or, if the Company elected to rely upon Rule 434 under the Securities Act and obtained the Underwriters' consent thereto, the Company shall have filed a Term Sheet with the Commission in the manner and within the time period required by such Rule 424(b);

(ii) no stop order suspending the effectiveness of the Registration Statement, any Rule 462(b) Registration Statement, or any post-effective amendment to the Registration Statement, shall be in effect and no proceedings for such purpose shall have been instituted or threatened by the Commission; and

(iii) the NASD shall have raised no objection to the fairness and reasonableness of the underwriting terms and arrangements.

(c) No Material Adverse Change or Ratings Agency Change. For the period from and after the date of this Agreement and prior to the First Closing Date and, with respect to the Optional Common Shares, the Second Closing Date:

(i) in the judgment of the Underwriters there shall not have occurred any Material Adverse Change; and

(ii) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any securities of the Company or any of its subsidiaries by any "nationally recognized statistical rating organization" as such term is defined for purposes of Rule 436(g)(2) under the Securities Act.

(d) Opinion of Counsel for the Company. On each of the First Closing Date and the Second Closing Date the Underwriters shall have received the favorable opinion of Crouch & Hallett, L.L.P., counsel for the Company, dated as of such Closing Date, the form of which is attached as Exhibit A (and the Underwriters shall have received additional conformed copies of such counsel's legal opinion for each of the several Underwriters).

(e) Opinion of Counsel for the Underwriters. On each of the First Closing Date and the Second Closing Date the Underwriters shall have received the favorable opinion of Fried, Frank, Harris, Shriver & Jacobson (a partnership including professional corporations), counsel for the Underwriters, dated as of such Closing Date, with respect to the matters set forth in paragraphs (i), (vii), (viii), (ix), (x), (xi) and (xiii) and the next-to-last paragraph of Exhibit A (and the Underwriters shall have received additional conformed copies of such counsel's legal opinion for each of the several Underwriters).

(f) Officers' Certificate. On each of the First Closing Date and the Second Closing Date the Underwriters shall have received a written certificate executed by the Chairman of the Board, Chief Executive Officer or President of the Company and the Chief Financial Officer or Chief Accounting Officer of the Company, dated as of such Closing Date, to the effect set forth in subsections (b)(ii) and (c)(ii) of this Section 5, and further to the effect that:



(i) for the period from and after the date of this Agreement and prior to such Closing Date, there has not occurred any Material Adverse Change;

(ii) the representations, warranties and covenants of the Company set forth in Section 1(A) of this Agreement are true and correct with the same force and effect as though expressly made on and as of such Closing Date; and

(iii) the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to such Closing Date.

(g) Bring-down Comfort Letter. On each of the First Closing Date and the Second Closing Date the Underwriters shall have received from Ernst & Young LLP, independent public or certified public accountants for the Company, a letter dated such date, in form and substance satisfactory to the Underwriters, to the effect that they reaffirm the statements made in the letter furnished by them pursuant to subsection (a) of this Section 5, except that the specified date referred to therein for the carrying out of procedures shall be no more than three business days prior to the First Closing Date or Second Closing Date, as the case may be (and the Underwriters shall have received additional conformed copies of such accountants' letter for each of the several Underwriters).

(h) Opinion of Counsel for the Selling Shareholders. On each of the First Closing Date and the Second Closing Date the Underwriters shall have received the favorable opinion of Crouch & Hallett, L.L.P., counsel for the Selling Shareholders, dated as of such Closing Date, the form of which is attached as Exhibit B (and the Underwriters shall have received additional conformed copies of such counsel's legal opinion for each of the several Underwriters).

(i) Selling Shareholders' Certificate. On each of the First Closing Date and the Second Closing Date the Underwriters shall receive a written certificate executed by each Selling Shareholder or its Attorney-in-Fact, dated as of such Closing Date, to the effect that:

(i) the representations, warranties and covenants of such Selling Shareholder set forth in Section 1(B) of this Agreement are true and correct with the same force and effect as though expressly made by such Selling Shareholder on and as of such Closing Date; and

(ii) such Selling Shareholder has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to such Closing Date.

(j) Selling Shareholders' Documents. On the date hereof, the Company and the Selling Shareholders shall have furnished for review by the Underwriters copies of the Powers of Attorney and Custody Agreements executed by each of the Selling Shareholders and such further information, certificates and documents as the Underwriters may reasonably request.

(k) Lock-up Agreement from Certain Shareholders of the Company Other than Selling Shareholders. On the date hereof, the Company shall have furnished to the Underwriters an agreement in the form of Exhibit C hereto from each director and executive officer of the Company

and such agreement shall be in full force and effect on each of the First Closing Date and the Second Closing Date.

(1) Additional Documents. On or before each of the First Closing Date and the Second Closing Date, the Underwriters and counsel for the Underwriters shall have received such information, documents and opinions as they may reasonably require for the purposes of enabling them to pass upon the issuance and sale of the Common Shares as contemplated herein, or in order to evidence the accuracy of any of the representations and warranties, or the satisfaction of any of the conditions or agreements, herein contained.

If any condition specified in this Section 5 is not satisfied when and as required to be satisfied, this Agreement may be terminated by the Underwriters by notice to the Company and the Selling Shareholders at any time on or prior to the First Closing Date and, with respect to the Optional Common Shares, by notice to the Company at any time prior to the Second Closing Date, which termination shall be without liability on the part of any party to any other party, except that Section 4, Section 6, Section 8 and Section 9 shall at all times be effective and shall survive such termination.

SECTION 6. REIMBURSEMENT OF UNDERWRITERS' EXPENSES. If this Agreement is terminated by the Underwriters pursuant to Section 5, Section 7, Section 10, Section 11 or Section 17, or if the sale to the Underwriters of the Common Shares on the First Closing Date is not consummated because of any refusal, inability or failure on the part of the Company or the Selling Shareholders to perform any agreement herein or to comply with any provision hereof, the Company agrees to reimburse the Underwriters (or such Underwriters as have terminated this Agreement with respect to themselves), severally, upon demand for all out-of-pocket expenses that shall have been reasonably incurred by the Underwriters in connection with the proposed purchase and the offering and sale of the Common Shares, including but not limited to fees and disbursements of counsel, printing expenses, travel expenses, postage, facsimile and telephone charges.

#### SECTION 7. EFFECTIVENESS OF THIS AGREEMENT.

This Agreement shall not become effective until the later of (i) the execution of this Agreement by the parties hereto and (ii) notification by the Commission to the Company and the Underwriters of the effectiveness of the Registration Statement under the Securities Act.

Prior to such effectiveness, this Agreement may be terminated by any party by notice to each of the other parties hereto, and any such termination shall be without liability on the part of (a) the Company or the Selling Shareholders to any Underwriter, except that the Company and the Selling Shareholders shall be obligated to reimburse the expenses of the Underwriters pursuant to Sections 4 and 6 hereof, (b) of any Underwriter to the Company or the Selling Shareholders, or (c) of any party hereto to any other party except that the provisions of Section 8 and Section 9 shall at all times be effective and shall survive such termination.

## SECTION 8. INDEMNIFICATION.

(a) Indemnification of the Underwriters. The Company and each of the Selling Shareholders, jointly and severally, agree to indemnify and hold harmless each Underwriter, its officers and employees, and each person, if any, who controls any Underwriter within the meaning of the Securities Act and the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which such Underwriter or such controlling person may become subject, under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of the Company), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based (i) upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, including any information deemed to be a part thereof pursuant to Rule 430A or Rule 434 under the Securities Act, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) upon any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; or (iii) in whole or in part upon any inaccuracy in the representations and warranties of the Company or the Selling Shareholders contained herein; or (iv) in whole or in part upon any failure of the Company or the Selling Shareholders to perform their respective obligations hereunder or under law; or (v) any act or failure to act or any alleged act or failure to act by any Underwriter in connection with, or relating in any manner to, the Common Stock or the offering contemplated hereby, and which is included as part of or referred to in any loss, claim, damage, liability or action arising out of or based upon any matter covered by clause (i) or (ii) above, provided that the Company shall not be liable under this clause (v) to the extent that a court of competent jurisdiction shall have determined by a final judgment that such loss, claim, damage, liability or action resulted directly from any such acts or failures to act undertaken or omitted to be taken by such Underwriter through its gross negligence or willful misconduct; and to reimburse each Underwriter and each such controlling person for any and all expenses (including the fees and disbursements of counsel chosen by Montgomery Securities) as such expenses are reasonably incurred by such Underwriter or such controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that the foregoing indemnity agreement shall not apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to the Company and the Selling Shareholders by the Underwriters expressly for use in the Registration Statement, any preliminary prospectus or the Prospectus (or any amendment or supplement thereto); and provided, further, that with respect to any preliminary prospectus, the foregoing indemnity agreement shall not inure to the benefit of any Underwriter from whom the person asserting any loss, claim, damage, liability or expense purchased Common Shares, or any person controlling such Underwriter, if copies of the Prospectus were timely delivered to the Underwriter pursuant to Section 2 and a copy of the Prospectus (as then amended or supplemented if the Company shall have furnished any amendments or supplements thereto)

was not sent or given by or on behalf of such Underwriter to such person, if required by law so to have been delivered, at or prior to the written confirmation of the sale of the Common Shares to such person, and if the Prospectus (as so amended or supplemented) would have cured the defect giving rise to such loss, claim, damage, liability or expense; and provided, further, that the liability of each Selling Shareholder under the foregoing indemnity agreement shall be limited to an amount equal to the aggregate initial public offering price of the Common Shares sold by such Selling Shareholder, less the underwriting discount, as set forth on the front cover page of the Prospectus. The indemnity agreement set forth in this Section 8(a) shall be in addition to any liabilities that the Company and the Selling Shareholders may otherwise have.

(b) Indemnification of the Company, its Directors and Officers. Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, each of its directors, each of its officers who signed the Registration Statement, the Selling Shareholders and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act, against any loss, claim, damage, liability or expense, as incurred, to which the Company, or any such director, officer, Selling Shareholder or controlling person may become subject, under the Securities Act, the Exchange Act, or other federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of such Underwriter), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon any untrue or alleged untrue statement of a material fact contained in the Registration Statement, any preliminary prospectus or the Prospectus (or any amendment or supplement thereto), or arises out of or is based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, any preliminary prospectus, the Prospectus (or any amendment or supplement thereto), in reliance upon and in conformity with written information furnished to the Company and the Selling Shareholders by the Underwriters expressly for use therein; and to reimburse the Company, or any such director, officer, Selling Shareholder or controlling person for any legal and other expense reasonably incurred by the Company, or any such director, officer, Selling Shareholder or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. The Company and each of the Selling Shareholders hereby acknowledge that the only information that the Underwriters have furnished to the Company and the Selling Shareholders expressly for use in the Registration Statement, any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) are the statements set forth (A) as the last \_\_\_\_ paragraphs on the inside front cover page of the Prospectus concerning [stabilization and passive market making] by the Underwriters and (B) in the table in the first paragraph and as the second paragraph and as the last \_\_\_\_ paragraphs under the caption "Underwriting" in the Prospectus; and the Underwriters confirm that such statements are correct. The indemnity agreement set forth in this Section 8(b) shall be in addition to any liabilities that each Underwriter may otherwise have.

## (c) Notifications and Other Indemnification Procedures.

Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 8, notify the indemnifying party in writing of the commencement thereof, but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party for contribution or otherwise than under the indemnity agreement contained in this Section 8 or to the extent it is not prejudiced as a proximate result of such failure. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties; provided, however, that the indemnified parties shall not have the right to select more than one such separate counsel for all indemnified parties unless an indemnified party shall have reasonably concluded that there may be a conflict between its position and the position of another indemnified party in conducting the defense of any such action or that there may be legal defenses available to such indemnified party which are different from or additional to those available to another indemnified party. Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 8 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the next preceding sentence or (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party.

## (d) Settlements. The indemnifying party under this

Section 8 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 party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by Section 8(c) hereof, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of

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such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding.

#### SECTION 9. CONTRIBUTION.

If the indemnification provided for in Section 8 is for any reason held to be unavailable to or otherwise insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party, as incurred, as a result of any losses, claims, damages, liabilities or expenses referred to therein (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Selling Shareholders, on the one hand, and the Underwriters, on the other hand, from the offering of the Common Shares 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 Company and the Selling Shareholders, on the one hand, and the Underwriters, on the other hand, in connection with the statements or omissions or inaccuracies in the representations and warranties herein which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company and the Selling Shareholders, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Common Shares pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Common Shares pursuant to this Agreement (before deducting expenses) received by the Company and the Selling Shareholders, and the total underwriting discount received by the Underwriters, in each case as set forth on the front cover page of the Prospectus (or, if Rule 434 under the Securities Act is used, the corresponding location on the Term Sheet) bear to the aggregate initial public offering price of the Common Shares as set forth on such cover. The relative fault of the Company and the Selling Shareholders, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact or any such inaccurate or alleged inaccurate representation or warranty relates to information supplied by the Company or the Selling Shareholders, on the one hand, or the Underwriters, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Section 8(c), any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 8(c) with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 9; provided, however, that no additional notice shall be required with respect to any action for which notice has been given under Section 8(c) for purposes of indemnification.

The Company, the Selling Shareholders and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 9 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 9.

Notwithstanding the provisions of this Section 9, no Underwriter shall be required to contribute any amount in excess of the underwriting commissions received by such Underwriter in connection with the Common Shares underwritten by it and distributed to the public. 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 Underwriters' obligations to contribute pursuant to this Section 9 are several, and not joint, in proportion to their respective underwriting commitments as set forth opposite their names in Schedule A. For purposes of this Section 9, each officer and employee of an Underwriter and each person, if any, who controls an Underwriter within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company with the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as the Company.

SECTION 10. DEFAULT OF ONE OR MORE OF THE SEVERAL UNDERWRITERS. If, on the First Closing Date or the Second Closing Date, as the case may be, any one or more of the several Underwriters shall fail or refuse to purchase Common Shares that it or they have agreed to purchase hereunder on such date, and the aggregate number of Common Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase does not exceed 10% of the aggregate number of the Common Shares to be purchased on such date, the other Underwriters shall be obligated, severally, in the proportions that the number of Firm Common Shares set forth opposite their respective names on Schedule A bears to the aggregate number of Firm Common Shares set forth opposite the names of all such non-defaulting Underwriters, or in such other proportions as may be specified by the non-defaulting Underwriters, to purchase the Common Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase on such date. If, on the First Closing Date or the Second Closing Date, as the case may be, any one or more of the Underwriters shall fail or refuse to purchase Common Shares and the aggregate number of Common Shares with respect to which such default occurs exceeds 10% of the aggregate number of Common Shares to be purchased on such date, and arrangements satisfactory to the Underwriters and the Company for the purchase of such Common Shares are not made within 48 hours after such default, this Agreement shall terminate without liability of any party to any other party except that the provisions of Section 4, Section 6, Section 8 and Section 9 shall at all times be effective and shall survive such termination. In any such case either the Underwriters or the Company shall have the right to postpone the First Closing Date or the Second Closing Date, as the case may be, but in no event for longer than seven days in order that the required changes, if any, to the Registration Statement and the Prospectus or any other documents or arrangements may be effected.

As used in this Agreement, the term "Underwriter" shall be deemed to include any person substituted for a defaulting Underwriter under this Section 10. Any action taken under this Section 10 shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

SECTION 11. TERMINATION OF THIS AGREEMENT. Prior to the First Closing Date this Agreement may be terminated by the Underwriters by notice given to the Company and the Selling Shareholders if at any time (i) trading or quotation in any of the Company's securities shall have been suspended or limited by the Commission or by the Nasdaq Stock Market, or trading in securities generally on either the Nasdaq Stock Market or the New York Stock Exchange shall have been suspended or limited, or minimum or maximum prices shall have been generally established on any of such stock exchanges by the Commission or the NASD; (ii) a general banking moratorium shall have been declared by any of federal, New York, Missouri or California authorities; (iii) there shall have occurred any outbreak or escalation of national or international hostilities or any crisis or calamity, or any change in the United States or international financial markets, or any substantial change or development involving a prospective substantial change in United States' or international political, financial or economic conditions, as in the judgment of the Underwriters is material and adverse and makes it impracticable to market the Common Shares in the manner and on the terms described in the Prospectus or to enforce contracts for the sale of securities; (iv) in the judgment of the Underwriters there shall have occurred any Material Adverse Change; or (v) the Company shall have sustained a loss by strike, fire, flood, earthquake, accident or other calamity of such character as in the judgment of the Underwriters may interfere materially with the conduct of the business and operations of the Company regardless of whether or not such loss shall have been insured. Any termination pursuant to this Section 11 shall be without liability on the part of (a) the Company or the Selling Shareholders to any Underwriter, except that the Company and the Selling Shareholders shall be obligated to reimburse the expenses of the Underwriters pursuant to Sections 4 and 6 hereof, (b) any Underwriter to the Company or the Selling Shareholders, or (c) of any party hereto to any other party except that the provisions of Section 8 and Section 9 shall at all times be effective and shall survive such termination.

SECTION 12. REPRESENTATIONS AND INDEMNITIES TO SURVIVE DELIVERY. The respective indemnities, agreements, representations, warranties and other statements of the Company, of its officers, of the Selling Shareholders and of the several Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or the Company or any of its or their partners, officers or directors or any controlling person, or the Selling Shareholders, as the case may be, and will survive delivery of and payment for the Common Shares sold hereunder and any termination of this Agreement.



SECTION 13 NOTICES. All communications hereunder shall be in writing and shall be mailed, hand delivered or telecopied and confirmed to the parties hereto as follows:

If to the Underwriters:

Montgomery Securities  
PaineWebber Incorporated  
Piper Jaffray Inc.  
c/o Montgomery Securities  
600 Montgomery Street  
San Francisco, California 94111  
Facsimile: 415-249-5558  
Attention: Richard A. Smith

with a copy to:

Montgomery Securities  
600 Montgomery Street  
San Francisco, California 94111  
Facsimile: (415) 249-5553  
Attention: David A. Baylor, Esq.

If to the Company:

Dave & Buster's, Inc.  
2751 Electronic Lane  
Dallas, Texas 75220  
Facsimile: (214) 357-1536  
Attention: Alan L. Murray

If to the Selling Shareholders:

[Custodian]  
[address]  
Facsimile: [\_\_\_\_]  
Attention: [\_\_\_\_]

Any party hereto may change the address for receipt of communications by giving written notice to the others.

SECTION 14. SUCCESSORS. This Agreement will inure to the benefit of and be binding upon the parties hereto, including any substitute Underwriters pursuant to Section 10 hereof, and to the benefit of the employees, officers and directors and controlling persons referred to in Section 8 and Section 9, and in each case their respective successors, and personal representatives, and no other person will have any right or obligation hereunder. The term "successors" shall not include any purchaser of the Common Shares as such from any of the Underwriters merely by reason of such purchase.

SECTION 15. PARTIAL UNENFORCEABILITY. The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

SECTION 16. GOVERNING LAW PROVISIONS. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN SUCH STATE.

SECTION 17. FAILURE OF ONE OR MORE OF THE SELLING SHAREHOLDERS TO SELL AND DELIVER COMMON SHARES. If one or more of the Selling Shareholders shall fail to sell and deliver to the Underwriters the Common Shares to be sold and delivered by such Selling Shareholders at the First Closing Date pursuant to this Agreement, then the Underwriters may at their option, by written notice from the Underwriters to the Company and the Selling Shareholders, either (i) terminate this Agreement without any liability on the part of any Underwriter or, except as provided in Sections 4, 6, 8 and 9 hereof, the Company or the Selling Shareholders, or (ii) purchase the shares which the Company and other Selling Shareholders have agreed to sell and deliver in accordance with the terms hereof. If one or more of the Selling Shareholders shall fail to sell and deliver to the Underwriters the Common Shares to be sold and delivered by such Selling Shareholders pursuant to this Agreement at the First Closing Date or the Second Closing Date, then the Underwriters shall have the right, by written notice from the Underwriters to the Company and the Selling Shareholders, to postpone the First Closing Date or the Second Closing Date, as the case may be, but in no event for longer than seven days in order that the required changes, if any, to the Registration Statement and the Prospectus or any other documents or arrangements may be effected.

SECTION 18. GENERAL PROVISIONS. This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. The Table of Contents and the Section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

Each of the parties hereto acknowledges that it is a sophisticated business person who was adequately represented by counsel during negotiations regarding the provisions hereof, including, without limitation, the indemnification provisions of Section 8 and the contribution provisions of Section 9, and is fully informed regarding said provisions. Each of the parties hereto further acknowledges that the provisions of Sections 8 and 9 hereto fairly allocate the

risks in light of the ability of the parties to investigate the Company, its affairs and its business in order to assure that adequate disclosure has been made in the Registration Statement, any preliminary prospectus and the Prospectus (and any amendments and supplements thereto), as required by the Securities Act and the Exchange Act.

If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to the Company and the Custodian the enclosed copies hereof, whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms.

Very truly yours,

DAVE & BUSTER'S, INC.

By: -----  
President

SELLING SHAREHOLDERS  
JAMES W. CORLEY  
DAVID O. CORRIVEAU

By: -----  
Attorney-in-Fact

The foregoing Underwriting Agreement is hereby confirmed and accepted by the Underwriters in San Francisco, California as of the date first above written.

MONTGOMERY SECURITIES  
PAINWEBBER INCORPORATED  
PIPER JAFFRAY INC.

By MONTGOMERY SECURITIES

By: -----  
Richard A. Smith  
Authorized Signatory

## SCHEDULE A

UNDERWRITERS	NUMBER OF FIRM COMMON SHARES TO BE PURCHASED
Montgomery Securities . . . . .	[ ]
PaineWebber Incorporated. . . . .	[ ]
Piper Jaffray Inc.. . . . .	[ ]
[ ] . . . . .	[ ]
[ ] . . . . .	[ ]
Total . . . . .	2,000,000

## SCHEDULE B

SELLING SHAREHOLDER	NUMBER OF FIRM COMMON SHARES TO BE SOLD	MAXIMUM NUMBER OF OPTIONAL COMMON SHARES TO BE SOLD
David O. Corriveau Dave & Buster's, Inc. 2751 Electronic Lane Dallas, Texas 75220 Facsimile: (214) 357-1536 . . . . .	100,000	0
James W. Corley Dave & Buster's, Inc. 2751 Electronic Lane Dallas, Texas 75220 Facsimile: (214) 357-1536 . . . . .	100,000	0
Total:	200,000	0

The final opinion in draft form should be attached as Exhibit A at the time this Agreement is executed.

Opinion of counsel for the Company to be delivered pursuant to Section 5(d) of the Underwriting Agreement.

References to the Prospectus in this Exhibit A include any supplements thereto at the Closing Date.

(i) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Missouri.

(ii) The Company has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and to enter into and perform its obligations under the Underwriting Agreement.

(iii) The Company is duly qualified as a foreign corporation to transact business and is in good standing in the State of Texas and in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except for such jurisdictions (other than the State of Texas) where the failure to so qualify or to be in good standing would not, individually or in the aggregate, result in a Material Adverse Change.

(iv) Each significant subsidiary (as defined in Rule 405 under the Securities Act), meaning \_\_\_\_\_, has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and, to the best knowledge of such counsel, is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required (including, with respect to Dave & Buster's I, L.P., the State of Texas), whether by reason of the ownership or leasing of property or the conduct of business, except for such jurisdictions (other than the State of Texas, with respect to Dave & Buster's I, L.P.) where the failure to so qualify or to be in good standing would not, individually or in the aggregate, result in a Material Adverse Change.

(v) All of the issued and outstanding capital stock of each such significant subsidiary has been duly authorized and validly issued, is fully paid and non-assessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance or, to the best knowledge of such counsel, any pending or threatened claim.

(vi) The authorized, issued and outstanding capital stock of the Company (including the Common Stock) conform to the descriptions thereof set forth or incorporated by reference in the Prospectus. All of the outstanding shares of Common Stock (including the

shares of Common Stock owned by Selling Shareholders) have been duly authorized and validly issued, are fully paid and nonassessable and, to the best of such counsel's knowledge, have been issued in compliance with the registration and qualification requirements of federal and state securities laws. The form of certificate used to evidence the Common Stock is in due and proper form and complies with all applicable requirements of the charter and by-laws of the Company and the General and Business Corporation Law of the State of Missouri. The description (or lack thereof) of the Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted and exercised thereunder, set forth in the Prospectus accurately and fairly presents the information required to be shown with respect to such plans, arrangements, options and rights.

(vii) No shareholder of the Company or any other person has any preemptive right, right of first refusal or other similar right to subscribe for or purchase securities of the Company arising (i) by operation of the charter or by-laws of the Company or the General and Business Corporation Law of the State of Missouri or (ii) to the best knowledge of such counsel, otherwise.

(viii) The Underwriting Agreement has been duly authorized, executed and delivered by, and is a valid and binding agreement of, the Company, enforceable in accordance with its terms, except as rights to indemnification thereunder may be limited by applicable law and except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles.

(ix) The Common Shares to be purchased by the Underwriters from the Company have been duly authorized for issuance and sale pursuant to the Underwriting Agreement and, when issued and delivered by the Company pursuant to the Underwriting Agreement against payment of the consideration set forth therein, will be validly issued, fully paid and nonassessable.

(x) Each of the Registration Statement and the Rule 462(b) Registration Statement, if any, has been declared effective by the Commission under the Securities Act. To the best knowledge of such counsel, no stop order suspending the effectiveness of either of the Registration Statement or the Rule 462(b) Registration Statement, if any, has been issued under the Securities Act and no proceedings for such purpose have been instituted or are pending or are contemplated or threatened by the Commission. Any required filing of the Prospectus and any supplement thereto pursuant to Rule 424(b) under the Securities Act has been made in the manner and within the time period required by such Rule 424(b).

(xi) The Registration Statement, including any Rule 462(b) Registration Statement, the Prospectus including any document incorporated by reference therein, and each amendment or supplement to the Registration Statement and the Prospectus including any document incorporated by reference therein, as of their respective effective or issue dates (other than the financial statements and supporting schedules included or incorporated by reference therein or in exhibits to or excluded from the Registration Statement, as to which no opinion need be rendered) comply as to form in all material respects with the applicable requirements of the Securities Act and the Exchange Act.



(xii) Each document filed pursuant to the Exchange Act (other than the financial statements and supporting schedules included therein, as to which no opinion need be rendered) and incorporated or deemed to be incorporated by reference in the Prospectus complied when so filed as to form in all material respects with the Exchange Act; and such counsel has no reason to believe that any of such documents, when they were so filed, contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such documents were filed, not misleading.

(xiii) The Common Shares have been approved for listing on the Nasdaq National Market.

(xiv) The statements (i) in the Prospectus under the caption "Risk Factors--Government Regulations," in the second paragraph under the caption "Management's Discussion and Analysis of Financial Condition and Results of Operations--Liquidity and Capital Resources," under the caption "Business--Intellectual Property," under the caption "Business--Government Regulations," under the caption "Business--Legal Proceedings" and under the caption "Underwriting" and (ii) in Item 15 of the Registration Statement, insofar as such statements constitute matters of law, summaries of legal matters, the Company's charter or by-law provisions, documents or legal proceedings, or legal conclusions, has been reviewed by such counsel and fairly present and summarize, in all material respects, the matters referred to therein.

(xv) To the best knowledge of such counsel, there are no legal or governmental actions, suits or proceedings pending or threatened which are required to be disclosed in the Registration Statement, other than those disclosed therein.

(xvi) To the best knowledge of such counsel, there are no Existing Instruments required to be described or referred to in the Registration Statement or to be filed as exhibits thereto other than those described or referred to therein or filed or incorporated by reference as exhibits thereto; and the descriptions thereof and references thereto are correct in all material respects.

(xvii) No consent, approval, authorization or other order of, or registration or filing with, any court or other governmental authority or agency is required for the Company's execution, delivery and performance of the Underwriting Agreement and consummation of the transactions contemplated thereby and by the Prospectus, except as required under the Securities Act, applicable state securities or blue sky laws and from the NASD.

(xviii) The execution and delivery of the Underwriting Agreement by the Company and the performance by the Company of its obligations thereunder (other than performance by the Company of its obligations under the indemnification section of the Underwriting Agreement, as to which no opinion need be rendered) (i) have been duly authorized by all necessary corporate action on the part of the Company; (ii) will not result in any violation of the provisions of the charter or by-laws of the Company or any subsidiary; (iii) will not constitute a breach of, or Default under, or result in the creation or imposition of any lien,

charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, (A) the Company's Revolving Credit Facility with Texas Commerce Bank National Association, as agent, or (B) to the best knowledge of such counsel, any other material Existing Instrument; or (iv) to the best knowledge of such counsel, will not result in any violation of any law, administrative regulation or administrative or court decree applicable to the Company or any subsidiary.

(xix) The Company is not, and after receipt of payment for the Common Shares will not be, an "investment company" within the meaning of Investment Company Act.

(xx) Except as disclosed in the Prospectus, to the best knowledge of such counsel, there are no persons with registration or other similar rights to have any equity or debt securities registered for sale under the Registration Statement or included in the offering contemplated by the Underwriting Agreement.

(xxi) To the best knowledge of such counsel, neither the Company nor any subsidiary is in violation of its charter or by-laws or any law, administrative regulation or administrative or court decree applicable to the Company or any subsidiary or is in Default in the performance or observance of any obligation, agreement, covenant or condition contained in any material Existing Instrument, except in each such case for such violations or Defaults as would not, individually or in the aggregate, result in a Material Adverse Change.

In addition, such counsel shall state that they have participated in conferences with officers and other representatives of the Company, representatives of the independent public or certified public accountants for the Company and with representatives of the Underwriters at which the contents of the Registration Statement and the Prospectus, and any supplements or amendments thereto, and related matters were discussed and, although such counsel is not passing upon and does not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement or the Prospectus (other than as specified above), and any supplements or amendments thereto, on the basis of the foregoing, nothing has come to their attention which would lead them to believe that either the Registration Statement or any amendments thereto, at the time the Registration Statement or such amendments became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that the Prospectus, as of its date or at the First Closing Date or the Second Closing Date, as the case may be, contained an untrue statement of a material fact or omitted 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 (it being understood that such counsel need express no belief as to the financial statements or schedules or other financial or statistical data derived therefrom, included or incorporated by reference in the Registration Statement or the Prospectus or any amendments or supplements thereto).

In rendering such opinion, such counsel may rely (A) as to matters involving the application of laws of any jurisdiction other than the General Corporation Law of the State of Delaware, the General Corporation Law of the State of California or the federal law of the United States, to the extent they deem proper and specified in such opinion, upon the opinion (which shall be dated the First Closing Date or the Second Closing Date, as the case may be,

shall be satisfactory in form and substance to the Underwriters, shall expressly state that the Underwriters may rely on such opinion as if it were addressed to them and shall be furnished to the Underwriters) of other counsel of good standing whom they believe to be reliable and who are satisfactory to counsel for the Underwriters; provided, however, that such counsel shall further state that they believe that they and the Underwriters are justified in relying upon such opinion of other counsel, (B) as to matters of fact, to the extent they deem proper, on certificates of responsible officers of the Company and public officials, and (C) as to matters set forth in paragraph (xxi) above, an opinion provided by Alan L. Murray, General Counsel of the Company.

The final opinion in draft form should be attached as Exhibit B at the time this Agreement is executed.

The opinion of such counsel pursuant to Section 5(h) shall be rendered to the Underwriters at the request of the Company and shall so state therein. References to the Prospectus in this Exhibit B include any supplements thereto at the Closing Date.

(i) The Underwriting Agreement has been duly authorized, executed and delivered by or on behalf of, and is a valid and binding agreement of, such Selling Shareholder, enforceable in accordance with its terms, except as rights to indemnification thereunder may be limited by applicable law and except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles.

(ii) The execution and delivery by such Selling Shareholder of, and the performance by such Selling Shareholder of its obligations under, the Underwriting Agreement and its Custody Agreement and its Power of Attorney will not, to the best of such counsel's knowledge, violate or contravene any provision of applicable law or regulation, or violate, result in a breach of or constitute a default under the terms of any agreement or instrument to which such Selling Shareholder is a party or by which it is bound, or any judgment, order or decree applicable to such Selling Shareholder of any court, regulatory body, administrative agency, governmental body or arbitrator having jurisdiction over such Selling Shareholder.

(iii) Such Selling Shareholder has good and valid title to all of the Common Shares which may be sold by such Selling Shareholder under the Underwriting Agreement and has the legal right and power, and all authorizations and approvals required to enter into the Underwriting Agreement and its Custody Agreement and its Power of Attorney, to sell, transfer and deliver all of the Common Shares which may sold by such Selling Shareholder under the Underwriting Agreement and to comply with its other obligations under the Underwriting Agreement, its Custody Agreement and its Power of Attorney.

(iv) Each of the Custody Agreement and Power of Attorney of such Selling Shareholder has been duly authorized, executed and delivered by such Selling Shareholder and is a valid and binding agreement of such Selling Shareholder, enforceable in accordance with its terms, except as rights to indemnification thereunder may be limited by applicable law and except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles.

(v) Assuming that the Underwriters purchase the Common Shares which are sold by such Selling Shareholder pursuant to

the Underwriting Agreement for value, in good faith and without notice of any adverse claim, the delivery of such Common Shares pursuant to the Underwriting Agreement will pass good and valid title to such Common Shares, free and clear of any security interest, mortgage, pledge, lien, encumbrance or other claim.

(vi) To the best of such counsel's knowledge, no consent, approval, authorization or other order of, or registration or filing with, any court or governmental authority or agency, is required for the consummation by such Selling Shareholder of the transactions contemplated in the Underwriting Agreement, except as required under the Securities Act, applicable state securities or blue sky laws, and from the NASD.

In rendering such opinion, such counsel may rely (A) as to matters involving the application of laws of any jurisdiction other than the General Corporation Law of the State of Delaware, the General Corporation Law of the State of California or the federal law of the United States, to the extent they deem proper and specified in such opinion, upon the opinion (which shall be dated the First Closing Date or the Second Closing Date, as the case may be, shall be satisfactory in form and substance to the Underwriters, shall expressly state that the Underwriters may rely on such opinion as if it were addressed to them and shall be furnished to the Underwriters) of other counsel of good standing whom they believe to be reliable and who are satisfactory to counsel for the Underwriters; provided, however, that such counsel shall further state that they believe that they and the Underwriters are justified in relying upon such opinion of other counsel, and (B) as to matters of fact, to the extent they deem proper, on certificates of the Selling Shareholders and public officials.

October \_\_, 1997

Montgomery Securities  
PaineWebber Incorporated  
Piper Jaffray Inc.  
c/o Montgomery Securities  
600 Montgomery Street  
San Francisco, California 94111

RE: Dave & Buster's, Inc. (the "Company")

Ladies & Gentlemen:

The undersigned is an owner of record or beneficially of certain shares of Common Stock of the Company ("Common Stock") or securities convertible into or exchangeable or exercisable for Common Stock. The Company proposes to carry out a public offering of Common Stock (the "Offering") for which you will act as the underwriters. The undersigned recognizes that the Offering will be of benefit to the undersigned and will benefit the Company by, among other things, raising additional capital for its operations. The undersigned acknowledges that you are relying on the representations and agreements of the undersigned contained in this letter in carrying out the Offering and in entering into underwriting arrangements with the Company with respect to the Offering.

In consideration of the foregoing, the undersigned hereby agrees that the undersigned will not, without the prior written consent of Montgomery Securities (which consent may be withheld in its sole discretion), directly or indirectly, sell, offer, contract or grant any option to sell (including without limitation any short sale), pledge, transfer, establish an open "put equivalent position" within the meaning of Rule 16a-1(h) under the Securities Exchange Act of 1934, or otherwise dispose of any shares of Common Stock, options or warrants to acquire shares of Common Stock, or securities exchangeable or exercisable for or convertible into shares of Common Stock currently or hereafter owned either of record or beneficially (as defined in Rule 13d-3 under Securities Exchange Act of 1934, as amended) by the undersigned, or publicly announce the undersigned's intention to do any of the foregoing, for a period commencing on the date hereof and continuing through the close of trading on the date 90 days after the date of the Prospectus. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of shares of Common Stock or securities convertible into or exchangeable or exercisable for Common Stock held by the undersigned except in compliance with the foregoing restrictions.

With respect to the Offering only, the undersigned waives any registration rights relating to registration under the Securities Act of any Common Stock owned either of record or beneficially by the undersigned, including any rights to receive notice of the Offering.

This agreement is irrevocable and will be binding on the undersigned and the respective successors, heirs, personal representatives, and assigns of the undersigned.

-----  
Printed Name of Holder

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

-----  
Printed Name of Person Signing  
(and indicate capacity of person signing if  
signing as custodian, trustee, or on behalf  
of an entity)

(214) 953-0053

September 11, 1997

Dave & Buster's, Inc.  
2751 Electronic Lane  
Dallas, Texas 75220

Gentlemen:

We have served as special counsel for Dave & Buster's, Inc., a Missouri corporation (the "Company"), in connection with the Registration Statement on Form S-3 (the "Registration Statement"), filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended, covering the proposed public offering of (i) 1,800,000 shares of Common Stock of the Company to be issued and sold by the Company (the "Primary Shares"), (ii) 200,000 shares of Common Stock of the Company to be sold by the Selling Stockholders named in the Registration Statement (the "Selling Stockholder Shares"), and (iii) subject to the exercise of an over-allotment option, an additional 300,000 shares of the Common Stock of the Company to be issued and sold by the Company (the "Over-Allotment Shares"). The Primary Shares and the Over-Allotment Shares are collectively referred to as the "Company Shares." With respect to the foregoing, we have examined such documents and questions of law as we have deemed necessary to render the opinion expressed below. Based upon the foregoing, we are of the opinion that:

1. The Company Shares, when sold, issued and delivered in the manner and for the consideration stated in the Prospectus constituting a part of the Registration Statement and in the Underwriting Agreement described in the Registration Statement, will be duly and validly authorized, issued and outstanding and fully paid and nonassessable.

2. The Selling Stockholder Shares have been duly and validly authorized, issued and outstanding and are fully paid and nonassessable.

We consent to the use of this opinion as Exhibit 5.1 to the Registration Statement and to the use of our name in the Registration Statement and in the Prospectus included therein under the heading "Legal Matters."

Very truly yours,

/s/ Crouch & Hallett, L.L.P.



## CONSENT OF INDEPENDENT AUDITORS

We consent to the reference to our firm under the caption "Experts" in the Registration Statement (Form S-3, No. 333-000000) and related Prospectus of Dave & Buster's, Inc. for the registration of shares of its common stock and to the incorporation by reference therein of our report dated March 21, 1997 with respect to the consolidated financial statements of Dave & Buster's Inc. included in its Annual Report (Form 10-K) for the year ended February 2, 1997 filed with the Securities and Exchange Commission.

September 9, 1997  
Dallas, Texas

/s/ ERNST & YOUNG LLP

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AUG-31-1997

1,359

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4,870

11,325

111,348

18,755

113,486

7,506

23,500

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0

73

79,360

113,486

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0

0

3,790

.35

.35