
FORM 10-0

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(Exact Name of Registrant as Specified in Its Charter)

MISSOURI
(State of Incorporation)

DALLAS, TEXAS
(Address of Principle Executive Offices)

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

required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

The number of shares of the Registrant's common stock, \$.01 par value, outstanding as of December 14, 2001 was 12,957,042 shares.

PART I. FINANCIAL INFORMATION

ITEM 1. CONSOLIDATED FINANCIAL STATEMENTS

DAVE & BUSTER'S, INC.
CONSOLIDATED STATEMENTS OF INCOME
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)
(UNAUDITED)

13 Weeks Ended		39 Weeks Ended	
November 4, 2001	October 29, 2000	November 4, 2001	October 29, 2000

Food and beverage revenues	\$ 41,171	\$ 39,782	\$ 126,325	\$ 117,252
Amusement and other revenues	40,200	39,462	126,878	117,407
	-----	-----	-----	-----
Total revenues	81,371	79,244	253,203	234,659
Cost of revenues	15,248	14,783	47,504	43,337
Operating payroll and benefits	26,573	24,780	79,207	71,336
Other store operating expenses	26,426	22,500	75,417	66,111
General and administrative expenses	5,120	4,811	15,374	14,465
Depreciation and amortization expense	7,407	6,706	21,315	18,688
Preopening costs	1,850	709	3,750	4,266
	-----	-----	-----	-----
Total costs and expenses	82,624	74,289	242,567	218,203
	=====	=====	=====	=====
Operating (loss) income	(1,253)	4,955	10,636	16,456
Interest expense, net	(1,683)	2,587	6,063	6,126
	-----	-----	-----	-----
Income (loss) before provision for income taxes	(2,936)	2,368	4,573	10,330
Provision for income taxes	(1,063)	869	1,655	3,791
	-----	-----	-----	-----
Net income (loss)	\$ (1,873)	\$ 1,499	\$ 2,918	\$ 6,539
Basic net income (loss) per share	\$ (0.14)	\$ 0.12	\$ 0.23	\$ 0.50
Basic weighted average shares outstanding	12,956	12,953	12,955	12,953
Diluted net income (loss) per share	\$ (0.14)	\$ 0.12	\$ 0.22	\$ 0.50
Diluted weighted average shares outstanding	12,956	12,974	13,016	12,963

See accompanying notes to consolidated financial statements.

DAVE & BUSTER'S, INC.
CONSOLIDATED BALANCE SHEETS
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE AMOUNTS)

ASSETS	November 4, 2001	February 4, 2001
	-----	-----
	(unaudited)	
Current assets:		
Cash and cash equivalents	\$ 3,379	\$ 3,179
Inventories	24,056	21,758
Prepaid expenses	4,689	3,663
Other current assets	2,287	1,787
	-----	-----
Total current assets	34,411	30,387
Property and equipment, net	267,380	260,467
Goodwill, net of accumulated amortization of \$2,517 and \$2,263	7,191	7,445
Other assets	4,473	5,576
	-----	-----
Total assets	\$ 313,455	\$ 303,875

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities:		
Current installments of long-term debt	\$ 5,500	\$ 4,124
Accounts payable	16,553	9,291
Accrued liabilities	10,717	7,050
Income taxes payable	3,524	3,567
Deferred income taxes	1,221	1,229
	-----	-----
Total current liabilities	37,515	25,261
Deferred income taxes	8,143	7,667
Other liabilities	6,318	4,700

Long-term debt, less current installments	96,065	103,860
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, 10,000,000 authorized; none issued	--	--
Common stock, \$0.01 par value, 50,000,000 authorized; 12,955,542 and 12,953,375 shares issued and outstanding as of November 4, 2001 and February 4, 2001, respectively	131	131
Paid in capital	115,675	115,659
Restricted stock awards	336	243
Retained earnings	51,118	48,200
	=====	=====
	167,260	164,233
Less: treasury stock, at cost (175,000 shares)	1,846	1,846
	-----	-----
Total stockholders' equity	165,414	162,387
	-----	-----
Total liabilities and stockholders' equity	\$ 313,455	\$ 303,875

See accompanying notes to consolidated financial statements.

DAVE & BUSTER'S, INC.
CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(IN THOUSANDS)
(UNAUDITED)

	Common Shares	Stock Amount	Paid in Capital	Restricted Stock Awards	Retained Earnings	Treasury Stock	Total
	-----	-----	-----	-----	-----	-----	-----
Balance, February 4, 2001	12,953	\$ 131	\$ 115,659	\$ 243	\$ 48,200	\$ (1,846)	\$ 162,387
Proceeds from exercising stock options	3	--	15	--	--	--	15
Tax benefit related to stock option exercises	--	--	1	--	--	--	1
Amortization of restricted stock awards	--	--	--	93	--	--	93
Net income	--	--	--	--	2,918	--	2,918
	-----	-----	-----	-----	-----	-----	-----
Balance, November 4, 2001	12,956	\$ 131	\$ 115,675	\$ 336	\$ 51,118	\$ (1,846)	\$ 165,414

See accompanying notes to consolidated financial statements.

DAVE & BUSTER'S, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(IN THOUSANDS)
(UNAUDITED)

	39 Weeks Ended	
	November 4, 2001	October 29, 2000
	-----	-----
Cash flows from operating activities		
Net income	\$ 2,918	\$ 6,539
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	21,315	18,688

Provision for deferred income taxes	468	--
Restricted stock awards	93	120
Changes in assets and liabilities		
Inventories	(2,298)	(2,298)
Prepaid expenses	(1,026)	(2,336)
Other assets	594	(357)
Accounts payable	7,262	(1,698)
Accrued liabilities	3,667	3,950
Income taxes payable	(43)	1,630
Other liabilities	1,618	1,637
	-----	-----
Net cash provided by operating activities	34,568	25,875
	-----	-----
Cash flows from investing activities:		
Capital expenditures	(35,211)	(42,277)
Proceeds from sale of property and equipment	7,245	--
	-----	-----
Net cash used by investing activities	(27,966)	(42,277)
	-----	-----
Cash flows from financing activities:		
Proceeds from issuance of common stock, net	16	--
Borrowings under long-term debt	18,810	124,542
Repayments of long-term debt	(25,228)	(108,120)
	-----	-----
Net cash provided (used) by financing activities	(6,402)	16,422
	-----	-----
Decrease in cash and cash equivalents	200	20
Beginning cash and cash equivalents	3,179	3,091
	-----	-----
Ending cash and cash equivalents	\$ 3,379	\$ 3,111

See accompanying notes to consolidated financial statements.

DAVE & BUSTER'S, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOVEMBER 4, 2001

(UNAUDITED)

(DOLLARS IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

NOTE 1: RESULTS OF OPERATIONS

The results of operations for the interim periods reported are not necessarily indicative of results to be expected for the year. The information furnished herein reflects all adjustments (consisting only of normal recurring adjustments) which are, in the opinion of management, necessary to fairly present the results of operations and financial position for the interim periods.

NOTE 2: BASIS OF PRESENTATION

BASIS OF PRESENTATION. The consolidated financial statements include the accounts of Dave & Buster's, Inc. and wholly-owned subsidiaries (the "Company"). All material intercompany accounts and transactions have been eliminated in consolidation. The consolidated balance sheet data presented herein for February 4, 2001 was derived from the Company's audited consolidated financial statements for the fiscal year then ended. The preparation of financial statements in accordance with generally accepted accounting principles requires the Company's management to make certain estimates and assumptions for the reporting periods covered by the financial statements. These estimates and assumptions affect the reported amounts of assets, liabilities, revenues and expenses. Actual amounts

could differ from these estimates. The Company's one industry segment is the ownership and operation of restaurant/entertainment Complexes (a "Complex" or "Store") under the name "Dave & Buster's" which are principally located in the United States.

CHANGE IN METHOD OF ACCOUNTING. The Company adopted Statement of Financial Accounting Standards No. 133, Accounting for Derivative Instruments and Hedging Activities ("FAS 133") effective February 5, 2001. FAS 133 requires the Company to recognize all derivatives on the balance sheet at fair value. Derivatives that are not hedges must be adjusted to fair value through income. If the derivative is a hedge, depending on the nature of hedge, changes in fair value of derivatives will either be offset against the change in fair value of the hedged assets, liabilities, or firm commitments through earnings or recognized in other comprehensive income until the hedged item is recognized in earnings. The ineffective portion of a derivative's change in fair value will be immediately recognized in earnings. During the current quarter, the Company has entered into an agreement that expires in 2007, to fix its variable-rate debt to fixed-rate debt (5.44% at November 4, 2001) on notional amounts aggregating \$52,503. The market risks associated with the agreements are mitigated because increased interest payments under the agreement resulting from a decrease in LIBOR are effectively offset by decreased payments under the debt obligation. The Company is exposed to credit losses for periodic settlements of amounts due under the agreements. Such amounts were not material at November 4, 2001.

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

The Company will apply the new rules on accounting for goodwill and other intangible assets beginning in the first quarter of 2002. Application of the nonamortization provisions of the Statements is expected to result in an increase in net income of \$243 (\$.02 per diluted share) in 2002 as a result of nonamortization of existing goodwill. During 2002, the Company will perform the first of the required impairment tests of goodwill and indefinite lived intangible assets as of February 4, 2002. While the Company has not yet determined what the effect of these tests will be on the earnings and financial position, no assurance can be given that the Company will not be required to write-off its goodwill of \$7,191 upon the adoption of the new standard. Such write off, if required, is to be recorded as a change in accounting principal.

NOTE 3: LONG-TERM DEBT

At November 4, 2001, long-term debt consisted of the following:

Long-term debt	\$108,810
Cash held for application to debt	(7,245)

	101,565
Less current installments	(5,500)

	\$ 96,065

On November 19, 2001, the Company amended its senior secured revolving credit and term loan facility. The amendment allows proceeds from sales/leaseback transactions to be applied to both the revolving credit and the term loans. Cash held for application to debt was allocated to the revolving credit and term loans on November 19, 2001. At November 19, 2001, \$4,347 was available under this facility.

NOTE 4: CONTINGENCIES

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

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (DOLLARS IN THOUSANDS)

Results of Operations - 13 Weeks Ended November 4, 2001 Compared to 13 Weeks Ended October 29, 2000

Total revenues increased to \$81,371 for the 13 weeks ended November 4, 2001 from \$79,244 for the 13 weeks ended October 29, 2000, an increase of \$2,127 or 3%. New stores opened in fiscal 1999 and 2000 and the first quarter of 2001 increased revenues during the period by \$7,094. Revenues at comparable stores decreased 6.7% for the 13 weeks ended November 4, 2001. The decrease in comparable stores revenues was primarily attributable to the attack on New York and Washington on September 11 and to a decline in company sponsored private parties. Total revenues for the 13 weeks ended November 4, 2001 from licensing agreements were \$103.

Cost of revenues increased to \$15,248 for the 13 weeks ended November 4, 2001 from \$14,783 for the 13 weeks ended October 29, 2000, an increase of \$465 or 3%. As a percentage of revenues, cost of revenues increased to 18.7% in the 13 weeks ended November 4, 2001 from 18.6% in the 13 weeks ended October 29, 2000 due to higher beverage costs and higher amusement costs associated with redemption and freight costs offset by lower food costs.

Operating payroll and benefits increased to \$26,573 for the 13 weeks ended November 4, 2001 from \$24,780 for the 13 weeks ended October 29, 2000, an increase of \$1,793 or 7%. As a percentage of revenue, operating payroll and benefits increased to 32.6% in the 13 weeks ended November 4, 2001 from 31.3% in the 13 weeks ended October 29, 2000 due to higher fixed labor and fringe benefit costs due to increased headcounts.

Other store operating expenses increased to \$26,426 for the 13 weeks ended November 4, 2001 from \$22,500 for the 13 weeks ended October 29, 2000, an increase of \$3,926 or 17%. As a percentage of revenues, other store operating expenses were 32.5% of revenues in the 13 weeks ended November 4, 2001 as compared to 28.4% of revenues in the 13 weeks ended October 29, 2000. Other store operating expenses as a percentage of revenue increased due to higher utility, marketing and occupancy costs.

General and administrative increased to \$5,120 for the 13 weeks ended November 4, 2001 from \$4,811 for the 13 weeks ended October 29, 2000, an increase of \$309 or 6%. As a percentage of revenues, general and administrative expenses increased to 6.3% in the 13 weeks ended November 4, 2001 from 6.1% in the 13 weeks ended October 29, 2000.

Depreciation and amortization increased to \$7,407 for the 13 weeks ended November 4, 2001 from \$6,706 for the 13 weeks ended October 29, 2000, an increase of \$701 or 10%. As a percentage of revenues, depreciation and amortization increased to 9.1% from 8.5% for the comparable period due to new store openings.

Preopening costs increased to \$1,850 for the 13 weeks ended November 4, 2001 from \$709 for the 13 weeks ended October 29, 2000. The timing of opening affects the amount of such costs in any given period.

Interest expense decreased to \$1,683 for the 13 weeks ended November 4, 2001 from \$2,587 for the 13 weeks ended October 29, 2000. The decrease was primarily due to lower interest rates in fiscal year 2001 offset by higher average debt.

The effective tax rate for the 13 weeks ended November 4, 2001 was 36.2% as compared to 36.7% for the 13 weeks ended October 29, 2000.

Results of Operations - 39 Weeks Ended November 4, 2001 Compared to 39 Weeks Ended October 29, 2000

Total revenues increased to \$253,203 for the 39 weeks ended November 4, 2001 from \$234,659 for the 39 weeks ended October 29, 2000, an increase of \$18,544 or 8%. New stores opened in fiscal 1999 and 2000 and the first of 2001 increased revenues during the period by \$24,239. Revenues at comparable stores decreased 3.4% for the 39 weeks ended November 4, 2001. The decrease in comparable stores revenues was primarily attributable to a decline in company sponsored private parties and also to the September 11 tragedy. Total revenues for the 39 weeks ended November 4, 2001 from licensing agreements were \$398.

Cost of revenues increased to \$47,504 for the 39 weeks ended November 4, 2001 from \$43,337 for the 39 weeks ended October 29, 2000, an increase of \$4,167 or 10%. As a percentage of revenues, cost of revenues increased to 18.7% in the 39 weeks ended November 4, 2001 from 18.4% in the 39 weeks ended October 29, 2000 due to higher amusement costs offset by lower food and beverage costs.

Operating payroll and benefits increased to \$79,207 for the 39 weeks ended November 4, 2001 from \$71,336 for the 39 weeks ended October 29, 2000, an increase of \$7,871 or 11%. As a percentage of revenue, operating payroll and benefits increased to 31.3% in the 39 weeks ended November 4, 2001 from 30.4% in the 39 weeks ended October 29, 2000 due to higher headcounts which result in higher fixed labor and fringe benefit costs offset by slightly lower variable labor costs.

Other store operating expenses increased to \$75,417 for the 39 weeks ended November 4, 2001 from \$66,111 for the 39 weeks ended October 29, 2000, an increase of \$9,306 or 14%. As a percentage of revenues, other store operating expenses were 29.8% of revenues in the 39 weeks ended November 4, 2001 as compared to 28.2% of revenues in the 39 weeks ended October 29, 2000. Other store operating expenses were higher due to increased utility and marketing costs at the stores.

General and administrative increased to \$15,374 for the 39 weeks ended November 4, 2001 from \$14,465 for the 39 weeks ended October 29, 2000, an increase of \$909 or 6%. As a percentage of revenues, general and administrative expenses decreased to 6.1% in the 39 weeks ended November 4, 2001 from 6.2% in the 39 weeks ended October 29, 2000.

Depreciation and amortization increased to \$21,315 for the 39 weeks ended November 4, 2001 from \$18,688 for the 39 weeks ended October 29, 2000, an increase of \$2,627 or 14%. As a percentage of revenues, depreciation and amortization increased to 8.4% from 8.0% for the comparable period due to new store openings.

Preopening costs decreased to \$3,750 for the 39 weeks ended November 4, 2001 from \$4,266 for the 39 weeks ended October 29, 2000. The timing of complex openings affects the amount of such costs in any given period.

Interest expense decreased to \$6,063 for the 39 weeks ended November 4, 2001 from \$6,126 for the 39 weeks ended October 29, 2000. The decrease was primarily due to lower interest rates in fiscal year 2001 offset by higher average debt.

The effective tax rate for the 39 weeks ended November 4, 2001 was 36.2% as compared to 36.7% for the 39 weeks ended October 29, 2001 offset by higher average debt.

Liquidity and Capital Resources

Cash flows from operations increased to \$34,568 for the 39 weeks ended November 4, 2001 from \$25,875 for the 39 weeks ended October 29, 2000. The increase was attributable to an increase in depreciation and amortization, an increase in operational receipts and the extension of vendor terms.

The Company has a \$110,000 senior secured revolving credit and term loan facility. The facility includes a five-year revolver and five and seven-year term debt. Borrowing under the facility bears 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 (6.2% at November 4, 2001) and is secured by all assets of the Company. The facility has certain financial covenants including a minimum consolidated tangible net worth level, a maximum leverage ratio, minimum fixed charge coverage and maximum level of capital expenditures. On November 19, 2001, the Company amended the facility to allow

proceeds from sale/leaseback transactions to be applied to both the revolving credit and the term loans. At November 19, 2001, \$4,347 was available under this facility.

The Company has entered into an agreement that expires in 2007, to fix its variable-rate debt to fixed-rate debt (5.44% at November 4, 2001) on notional amounts aggregating \$52,503. The market risks associated with the agreements are mitigated because increased interest payments under the agreement resulting from a decrease in LIBOR are effectively offset by decreased payments under the debt obligation. The Company is exposed to credit losses for periodic settlements of amounts due under the agreements. Such amounts were not material at November 4, 2001.

Through November 7, 2001, the Company opened a new store in Miami, Florida, Frisco, Texas, Honolulu, Hawaii and in Cleveland, Ohio. The Company estimates that its capital expenditures will be approximately \$44,000 for 2001. For 2002 the Company plans to open one complex and estimates its capital expenditures will be approximately \$28,500. The Company intends to finance these capital expenditures with cash flow from operations, the senior secured revolving credit and term loan facility, and other additional resources which management is currently pursuing.

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

The Company will apply the new rules on accounting for goodwill and other intangible assets beginning in the first quarter of 2002. Application of the nonamortization provisions of the Statements is expected to result in an increase in net income of \$243 (\$.02 per diluted share) in 2002 as a result of nonamortization of existing goodwill. During 2002, the Company will perform the first of the required impairment tests of goodwill and indefinite lived intangible assets as of February 4, 2002. While the Company has not yet determined what the effect of these tests will be on the earnings and financial position, no assurance can be given that the Company will not be required to write-off its goodwill of \$7,191 upon the adoption of the new standard. Such write off, if required, is to be recorded as a change in accounting principal.

"Safe Harbor" Statement Under the Private Securities Litigation Reform Act of 1995

Certain statements in this Report on Form 10-Q are not based on historical facts but are "forward-looking statements" that are based on numerous assumptions made as of the date of this report. Forward looking statements are generally identified by the words "believes", "expects", "intends", "anticipates", "scheduled", and certain similar expressions. Such forward-looking statements involve known and unknown risks, uncertainties, and other factors which may cause the actual results, performance, or achievements of Dave & Buster's, Inc. to be materially different from any future results, performance, or achievements expressed or implied by such forward-looking statements. Such factors include, among others, the following: general economic and business conditions; competition; availability; locations and terms of sites for Complex development; quality of management; changes in, or the failure to comply with, government regulations; and other risks indicated in this filing and discussed under "Risks" in the Company's Form 10-K filed with the Securities and Exchange Commission.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits

- | | |
|--------|--|
| 10.1.2 | Amendment No. 2 to Revolving Credit and Term Loan Agreement dated as of November 19, 2001 by and among the Company and its subsidiaries, Fleet National Bank |
|--------|--|

(as agent) and the financial institutions named therein.

- 10.16 Agreement of Sale and Purchase dated October 1, 2001 between the Company, as seller, and General Electric Capital Business Asset Funding Corporation, as purchaser, for the Company's corporate headquarters in Dallas, Texas.
- 10.17 Lease Agreement dated October 18, 2001 by and between General Electric Capital Business Asset Funding Corporation, as landlord, and the Company, as tenant, for the Company's corporate headquarters in Dallas, Texas.

(b) Reports on Form 8-K

No reports on Form 8-K were filed during the 13 weeks ended November 4, 2001.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

DAVE & BUSTER'S, INC.

Dated: December 14, 2001

by /s/ David O. Corriveau

David O. Corriveau
Co-Chairman of the Board,
Co-Chief Executive Officer
and President

Dated: December 14, 2001

by /s/ William C. Hammett, Jr.

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

INDEX TO EXHIBITS

EXHIBIT NUMBER -----	DESCRIPTION -----
10.1.2	Amendment No. 2 to Revolving Credit and Term Loan Agreement dated as of November 19, 2001 by and among the Company and its subsidiaries, Fleet National Bank (as agent) and the financial institutions named therein.
10.16	Agreement of Sale and Purchase dated October 1, 2001 between the Company, as seller, and General Electric Capital Business

Asset Funding Corporation, as purchaser, for the Company's corporate headquarters in Dallas, Texas.

- 10.17 Lease Agreement dated October 18, 2001 by and between General Electric Capital Business Asset Funding Corporation, as landlord, and the Company, as tenant, for the Company's corporate headquarters in Dallas, Texas.

AMENDMENT NO. 2
TO
REVOLVING CREDIT AND TERM LOAN AGREEMENT

This AMENDMENT NO. 2 TO REVOLVING CREDIT AND TERM LOAN AGREEMENT dated as of November 19, 2001 (this "Amendment"), by and among DAVE & BUSTER'S, INC. ("D & B"), the Subsidiaries of D&B (D&B collectively with such subsidiaries, the "Borrowers"), FLEET NATIONAL BANK ("FNB"), the other lending institutions listed on Schedule 1 to the Credit Agreement (together with FNB, the "Banks"), FNB as administrative agent for the Banks (the "Agent") and Bank One, NA as documentation agent (the "Documentation Agent"), amends certain provisions of the Revolving Credit and Term Loan Agreement, dated as of June 30, 2000 among the Borrowers, the Banks, the Agent and the Documentation Agent (as amended and in effect from time to time, the "Credit Agreement"). Each capitalized term used herein without definition shall have the meaning assigned to such term in the Credit Agreement.

WHEREAS, D&B has created a new subsidiary, D&B Leasing, Inc. (the "New Subsidiary");

WHEREAS, pursuant to Section 9.17 of the Credit Agreement, the New Subsidiary is required to become a Borrower under the Credit Agreement and party to the Security Documents;

WHEREAS, the Borrowers, the Banks and the Agent have agreed to amend certain terms and conditions of the Credit Agreement as specifically set forth in this Amendment;

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

SECTION 1. JOINDER TO CREDIT AGREEMENT AND SECURITY DOCUMENTS. The New Subsidiary hereby joins the Credit Agreement and each of the Security Documents as a "Borrower" as defined therein as if it were an original signatory thereto, and further covenants and agrees that by its execution hereof it shall be bound by and shall comply with all the terms and conditions of the Credit Agreement and each of the Security Documents applicable to it as a Borrower.

SECTION 2. AMENDMENT TO SECTION 1 - DEFINITIONS. Section 1 of the Credit Agreement is hereby amended as follows:

(a) by deleting the table within the definition of the term "Applicable Margin" and substituting the following table therefor:

LEVEL	LEVERAGE RATIO	REVOLVING CREDIT LOANS		TERM LOAN A		TERM LOAN B	
		BASE RATE LOANS	EURO-DOLLAR RATE LOANS AND LETTERS OF CREDIT	BASE RATE LOANS	EURO-DOLLAR RATE LOANS	BASE RATE LOANS	EURO-DOLLAR RATE LOANS
I	< 1.25:1	0.75%	2.25%	0.75%	2.25%	1.75%	3.25%
II	> 1.25:1 and < 1.75:1	1.50%	3.00%	1.50%	3.00%	2.25%	3.75%
III	> 1.75:1	2.00%	3.50%	2.00%	3.50%	2.50%	4.00%

(b) by further amending the definition of the term "Applicable Margin" by deleting the text of clause (a) in the second paragraph of such definition and substituting the following therefor:

(a) for the period commencing on November 19, 2001 through the end of the current Rate Adjustment Period, the Applicable Margin shall be that percentage corresponding to Level II in the table above.

(c) by deleting the text of the definition of the term "Leverage Ratio" in its entirety and substituting the following therefor:

Leverage Ratio. As at the end of any fiscal quarter of the Borrowers, the ratio of (a) Consolidated Funded Indebtedness at such date (less, for purposes of calculating the Leverage Ratio as at the end of the fiscal quarter of the Borrower ending November 4, 2001, any Indebtedness to be repaid pursuant to Section 4.4.2.1 on November 19, 2001 with Net Cash Proceeds from Permitted Sale-Leasebacks received prior to November 19, 2001) to (b) Consolidated EBITDA for the period of the four (4) consecutive fiscal quarters then ending minus with respect to any Unit which was the subject of a Permitted Sale-Leaseback during such period, the difference between (i) the amount of rental expense which would have been incurred in respect of such Unit if such Permitted Sale-Leaseback had occurred immediately prior to the beginning of such four-quarter period (assuming the monthly rental rate for such Unit throughout such four-quarter period equaled the monthly rental rate in effect at the end of such period and (ii) the amount of rental expense actually incurred in respect of such Unit during such four-quarter period and already deducted in calculating Consolidated EBITDA for such period.

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SECTION 3. AMENDMENT TO SECTION 2 - RESTRICTION ON REVOLVING CREDIT USAGE. Section 2 of the Credit Agreement is hereby amended by inserting at the end thereof the following new Section 2.10:

2.10. RESTRICTION ON REVOLVING CREDIT USAGE. Notwithstanding anything to the contrary set forth herein, in the event that the Borrowers have prepaid Revolving Credit Loans as required pursuant to Sections 3.2 and 4.4.2 with Net Cash Proceeds received in connection with Permitted Sale-Leasebacks, (a) on or prior to April 30, 2002, the Borrowers shall not be permitted to reborrow under this Section 2 more than \$6,000,000 of the amount so repaid from such proceeds without the prior written consent of those Banks holding in aggregate at least fifty-one percent (51%) of the Total Revolving Credit Commitment as in effect at such time and (b) after April 30, 2002, the Borrowers shall not be permitted to reborrow under this Section 2 more than \$4,000,000 of the amount so repaid from such proceeds without the prior written consent of those Banks holding in aggregate at least fifty one percent (51%) of the Total Revolving Credit Commitment as in effect at such time.

SECTION 4. AMENDMENT TO SECTION 3 - MANDATORY PREPAYMENT OF REVOLVING CREDIT LOANS. Section 3.2 of the Credit Agreement is hereby amended by inserting after the first sentence thereof the following new sentences:

In addition to the mandatory prepayment required by the preceding sentence, the Borrowers shall also prepay the Revolving Credit Loans as required pursuant to Section 4.4.2. In the event that the Borrowers have prepaid Revolving Credit Loans as required pursuant to Section 4.4.2 with Net Cash Proceeds received in connection with Permitted Sale-Leasebacks and thereafter have reborrowed under Section 2 more than \$4,000,000 of the amount so repaid, then to the extent that the aggregate principal amount of the Revolving Credit Loans so reborrowed and still outstanding on April 30, 2002 exceeds \$4,000,000, the Borrowers shall also repay on April 30, 2002 any Revolving Credit Loans in an aggregate principal amount equal to such excess. For purposes of calculating the outstanding principal amount of Revolving Credit Loans so reborrowed and outstanding on April 30, 2002, (i) any voluntary repayments of Revolving Credit Loans received by the Agent after such reborrowing shall be deemed to have been applied to repay such reborrowed Revolving Credit Loans and (ii) no mandatory prepayments required pursuant to Section 4.4.2 shall be deemed to have been applied to repay such reborrowed Revolving Credit Loans unless and until no other Revolving Credit Loans remain outstanding on April 30, 2002.

SECTION 5. AMENDMENT OF SECTION 4.4.2.1 - MANDATORY PREPAYMENTS FROM NET CASH PROCEEDS. Section 4.4.2.1 of the Credit Agreement is hereby amended as follows:

(a) by inserting after the word "then" at the beginning of the text following the comma at the end of clause (f) the parenthetical phrase "(except as provided otherwise in the next paragraph with respect to Existing Unit Permitted Sale-Leasebacks completed on or prior to April 15, 2002 and the Cleveland, Ohio New Unit Permitted Sale-Leaseback if completed on or prior to April 15, 2002)";

(b) by inserting after the reference to "Section 4.4.2.1" in the sentence which begins "Any insurance proceeds, awards from taking or condemnation of properties or Net Cash Proceeds from the disposition of a New Unit Permitted Sale-Leaseback described in this Section 4.4.2.1 . . ." which appears in the text following the comma at the end of clause (f) the parenthetical phrase "(except Net Cash Proceeds from the disposition of the Cleveland, Ohio New Unit Permitted Sale-Leaseback if and to the extent that such Net Cash Proceeds are required to be applied as set forth in the next paragraph)"; and

(c) by inserting after the text following the comma at the end of clause (f) the following new paragraph:

Notwithstanding anything to the contrary set forth above, if the Borrowers receive Net Cash Proceeds from any Existing Unit Permitted Sale-Leaseback completed on or prior to April 15, 2002 or from a New Unit Permitted Sale-Leaseback of the Cleveland, Ohio Unit if completed on or prior to April 15, 2002, the Borrowers shall, within three Business Days following such receipt (or if such receipt occurred prior to November 19, 2001, on or prior to November 26, 2001), apply: (x) with respect to the first \$7,500,000 of such Net Cash Proceeds, (I) forty percent (40%) to prepay the Term Loans and (II) sixty percent (60%) to repay outstanding Revolving Credit Loans; (y) with respect to the next \$17,500,000 of such Net Cash Proceeds, (I) eighty percent (80%) to prepay the Term Loans and (II) twenty percent (20%) to repay outstanding Revolving Credit Loans; and (z) with respect to any such Net Cash Proceeds in excess of \$25,000,000, one hundred percent (100%) to prepay the Term Loans. No amount repaid with respect to a Term Loan may be reborrowed. The Revolving Credit Commitments shall not be reduced by the amounts required to be applied to prepay the Revolving Credit Loans pursuant to this paragraph; provided, however, that the Borrowers' right to reborrow the amount of the Revolving Credit Loans so repaid shall be restricted as set forth in Section 2.10. Notwithstanding anything to the contrary set forth in Section 4.4.2.3, the amount of the mandatory prepayments of the Term Loans required to be made pursuant to this paragraph shall be applied forty-five percent (45%) to repay the Term Loan A and fifty-five percent (55%) to repay Term Loan B

subject to application pursuant to Section 4.4.2.4 if and to the extent that any Bank holding any portion of Term Loan B declines such prepayment. In the event that at the time of any repayment required pursuant to this paragraph, the aggregate principal amount of any outstanding Revolving Credit Loans is less than the amount which would otherwise be required to be applied to repay Revolving Credit Loans hereunder, such excess amount shall be applied to prepay the Term Loans as provided in this paragraph. All mandatory prepayments of Term Loan A or Term Loan B, as the case may be, shall be applied against the remaining scheduled installments of such Term Loan in the inverse order of their maturity. Any prepayment of any portion of the principal of either Term Loan or any Revolving Credit Loan shall include all interest accrued on such portion of such Term Loan or Revolving Credit Loan to the date of prepayment. The provisions of Section 6.9 shall apply to each prepayment pursuant to this paragraph. Within two

Business Days after any Borrower receives any Net Cash Proceeds from any Existing Unit Permitted Sale-Leaseback completed on or prior to April 15, 2002 or from a New Unit Permitted Sale-Leaseback of the Cleveland, Ohio Unit if completed on or prior to April 15, 2002 (or if the receipt of such Net Cash Proceeds occurred prior to November 19, 2001, then on or prior to November 26, 2001), the Borrowers shall deliver to the Agent written notice of such receipt, which notice shall specify the amount of such Net Cash Proceeds then received, the aggregate amount of such Net Cash Proceeds received to date (inclusive of the amount then received), the portion of such Net Cash Proceeds then received which is to be applied to prepay the Revolving Credit Loans, Term Loan A and Term Loan B in accordance with the terms hereof and the repayment amount to be received by each Bank in respect of such Bank's Revolving Credit Loans, such Bank's Term A Commitment Percentage of the Term Loan A and/or such Bank's Term B Commitment Percentage of the Term Loan B, as applicable.

SECTION 6. AMENDMENT OF SECTION 4.4.2.3 - APPLICATION OF PREPAYMENTS. Section 4.4.2.3 of the Credit Agreement is hereby amended by inserting the phrase "Except as otherwise provided in the last paragraph of Section 4.4.2.1," at the beginning to the first sentence thereof and changing the first letter of the word "All" immediately following such phrase to lower case.

SECTION 7. AMENDMENT OF SECTION 6 - INTEREST AFTER DEFAULT. Section 6.10.1 and Section 6.10.2 of the Credit Agreement are hereby amended by deleting the phrase "two percent (2%)" where it appears in each such section and substituting therefor the phrase "three percent (3%)".

SECTION 8. AMENDMENT OF SECTION 9 - INSPECTION OF PROPERTIES AND BOOKS, ETC. Section 9 of the Credit Agreement is hereby amended by inserting the following new Section 9.9.4 at the end thereof:

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9.9.4 OUTSIDE CONSULTANT. In the event that the comparative sales report prepared by the Borrowers in a manner consistent with past practice for the fourth quarter of Fiscal Year 2002 (ending February 2, 2002) indicates a decline of five percent (5%) or more in same Unit sales from the fourth quarter of Fiscal Year 2001, the Agent may, and upon the request of the Majority Banks shall, appoint an outside consultant to assist the Banks in analyzing the business and financial condition of the Borrowers and any proposals relating to this Credit Agreement, the Loans outstanding hereunder or the Borrowers' business. The Borrowers shall pay any fees, costs and expenses incurred by or payable to such consultant. Contemporaneously with the delivery to the Banks of the financial statements of the Borrowers required to be delivered pursuant to Section 9.4(b) for the fourth quarter of Fiscal Year 2002, the Borrower shall deliver to the Agent its comparative sales report for the fourth quarter of Fiscal Year 2002 prepared in a manner consistent with past practice and showing same Unit sales for the corresponding quarter of Fiscal Year 2001.

SECTION 9. AMENDMENT OF SECTION 10.3 - LOANS TO EMPLOYEES. Section 10.3 of the Credit Agreement is hereby amended by deleting the text of Section 10.3(i) in its entirety and substituting in place thereof the following:

(i) Investments consisting of loans and advances to employees in an aggregate amount not to exceed \$500,000 at any time outstanding; provided that (x) other than loans or advances to employees for moving, entertainment, travel and other similar expenses incurred in the ordinary course of the Borrowers' business in an aggregate amount at any one time outstanding not to exceed \$100,000, no new loans or advances shall be made to employees after November 19, 2001 until March 31, 2002, and (y) other than loans and advances permitted pursuant to clause (x) above, new loans or advances may not be made to employees after March 31, 2002 unless prior to making any such loan or advance, the Borrowers deliver to the Agent a certificate signed by a financial officer of the Borrowers demonstrating that at the time of making such loan or advance the sum of the (i) the Borrowers' cash on hand plus (ii) the amount by which the Total Revolving Credit Commitment exceeds the sum of (A) the Outstanding amount of Revolving Credit Loans plus (B) the Maximum Drawing Amount, plus (C) all Unpaid Reimbursement Obligations exceeds \$6,000,000 after giving effect to any Investments

then contemplated to be made under Section 10.3(i) and any Revolving Credit Loans to be advanced to finance such Investment;

SECTION 10. AMENDMENT OF SECTION 11 - LEVERAGE RATIO. Section 11.1 of the Credit Agreement is hereby amended by deleting the text thereof in its entirety and substituting the following therefor:

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11.1 LEVERAGE RATIO. The Borrowers will not permit the Leverage Ratio, determined at the end of and for any period of four consecutive fiscal quarters of the Borrowers ending during any period described in the table below, to be greater than the ratio set forth opposite such period in the column labeled Unadjusted Ratio in such table; provided that for any period of four consecutive fiscal quarters of the Borrowers ending from and after the date on which the Borrowers receive Net Cash Proceeds in an aggregate amount in excess of \$12,500,000 from Existing Unit Permitted Sale-Leasebacks and a New Unit Permitted Sale-Leaseback in respect to the Cleveland, Ohio Unit, the Borrowers will not permit the Leverage Ratio, determined at the end of and for such four quarter period to be greater than the ratio set forth below in the column labeled "Adjusted Ratio" opposite the period during which such four quarter period ends:

Period (inclusive of end dates) -----	Unadjusted Ratio -----	Adjusted Ratio -----
Fiscal Year 2002 (ending 2/3/02)	2.00:1	1.75:1
Fiscal Year 2003 (ending 2/2/03)	1.75:1	1.50:1
Fiscal Year 2004 and thereafter	1.50:1	1.50:1

SECTION 11. AMENDMENT OF SECTION 11.4 - CAPITAL EXPENDITURES AND NEW LEASES. Section 11.4 of the Credit Agreement is hereby amended by deleting the text thereof in its entirety and substituting in place thereof the following:

11.4. NEW UNIT CAPITAL EXPENDITURES; NEW LEASES. The Borrowers will not, nor will they permit any of their Subsidiaries or Affiliates to (a) make aggregate New Unit Capital Expenditures in excess of \$15,000,000 during any fiscal year, (b) permit more than one new Unit to open or become operational in the Fiscal Year 2003 of the Borrower, (c) permit any new Unit to open or become operational in any twelve (12) month period ending thereafter, without the prior written unanimous consent of the Banks, (d) make aggregate New Unit Capital Expenditures in excess of \$12,500,000 in connection with any single Unit during such Unit's first full year of operation, (e) with respect to any single Unit opening in a particular fiscal year, expend more than the Per-Unit Start-Up Cost Cap in Consolidated Start-Up Costs in connection with such Unit, (f) commit to the construction, acquisition or opening of new Units at any time that the Leverage Ratio at the end of the most recently ended fiscal quarter for which the Borrowers' have delivered the Compliance Certificate exceeds the Incurrence Ratio, or (g) sign any new real property leases without the prior written unanimous consent of the Banks.

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SECTION 12. AMENDMENT OF SECTION 11 - MINIMUM EBITDA REQUIREMENT. Section 11 of the Credit Agreement shall be amended by inserting the following new Section 11.5 at the end thereof:

11.5. MINIMUM CONSOLIDATED EBITDA. The Borrowers will not

permit the sum of (i) Consolidated EBITDA for each fiscal quarter of the Borrowers specified in the table below plus (ii) to the extent deducted from Consolidated EBITDA of the Borrowers for such fiscal quarter, any rental expense incurred by the Borrowers in respect of each Unit which is the subject of a Permitted Sale-Leaseback transaction occurring after October 1, 2001 to be less than the minimum amount set forth opposite such fiscal quarter in the table below:

FISCAL QUARTER -----	MINIMUM CONSOLIDATED EBITDA -----
Q4 -FY 2002 (ending 2/3/02)	\$15,750,000
Q1 - FY 2003	\$14,250,000
Q2 - FY 2003	\$11,500,000
Q3 - FY 2003	\$ 9,500,000
Q4 - FY 2003 (ending 2/2/03)	\$16,000,000

SECTION 13. AMENDMENT TO SCHEDULE 8.18. Schedule 8.18 to the Credit Agreement is hereby amended by deleting such Schedule 8.18 in its entirety and substituting in place thereof the Schedule 8.18 attached to this Amendment and made a part hereof.

SECTION 14. AFFIRMATION AND ACKNOWLEDGMENT. Each Borrower hereby ratifies and confirms all of its Obligations to the Banks and the Agent, including, without limitation, the Loans, and the Borrowers hereby affirm their joint and several absolute and unconditional promise to pay to the Banks the Loans, the Reimbursement Obligations, and all other amounts due under the Credit Agreement as amended hereby. Each Borrower hereby confirms that the Obligations are and remain secured pursuant to the

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Security Documents and pursuant to all other instruments and documents executed and delivered by each Borrower as security for the Obligations.

SECTION 15. REPRESENTATIONS AND WARRANTIES. Each Borrower hereby represents and warrants to the Banks and the Agent as follows:

(a) The execution and delivery by each Borrower of this Amendment and the performance by each Borrower of its obligations and agreements under this Amendment and the Credit Agreement as amended hereby are within the corporate authority of such Borrower, have been duly authorized by all necessary corporate proceedings on behalf of such Borrower, and do not and will not contravene any provision of law, statute, rule or regulation to which such Borrower is subject or any of such Borrower's charter, other incorporation papers, by-laws or any stock provision or any amendment thereof or of any agreement or other instrument binding upon such Borrower.

(b) Each of this Amendment and the Credit Agreement as amended hereby constitutes the legal, valid and binding joint and several obligation of each Borrower, enforceable in accordance with its respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights.

(c) No approval or consent of, or filing with, any governmental agency or authority is required to make valid and legally binding the execution, delivery or performance by each Borrower of this Amendment and the Credit Agreement as amended hereby.

(d) The representations and warranties contained in Section 8 of the Credit Agreement are true and correct at and as of the date made and as of the date hereof, except to the extent of changes resulting from transactions

contemplated or permitted by the Credit Agreement and the other Loan Documents and changes occurring in the ordinary course of business that singly or in the aggregate are not materially adverse, and to the extent that such representations and warranties relate expressly to an earlier date.

(e) Each Borrower has performed and complied in all material respects with all terms and conditions herein required to be performed or complied with by it prior to or at the time hereof, and as of the date hereof, after giving effect to the provisions hereof, there exists no Event of Default or Default.

SECTION 16 EFFECTIVENESS. This Amendment shall become effective on November 19, 2001 upon the satisfaction of the following conditions precedent:

SECTION 16.1. MAJORITY BANK APPROVAL. Each section of this Amendment other than the sections specified in Section 16.2 shall become effective upon the written consent of the Borrowers and the written consent of the Majority Banks.

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SECTION 16.2. UNANIMOUS BANK APPROVAL. Sections 4, 5 and 6 hereof shall become effective upon the written consent of the Borrowers and the written consent of each of the Banks.

SECTION 16.3. JOINDER DOCUMENTS. The New Subsidiary shall duly execute and deliver to the Agent allonges to each of the Revolving Credit Notes and the Term Notes, an Agency Account Agreement, and certificates of insurance, in form and substance reasonably satisfactory to the Agent. D&B shall deliver to the Agent to be held under the Stock Pledge Agreement as security for the Obligations, stock certificates representing all of the issued and outstanding capital stock of the New Subsidiary, together with stock powers duly executed in blank in form and substance reasonably satisfactory to the Agent for the New Subsidiary.

SECTION 16.4. AMENDMENT FEES. The Borrowers shall have paid to the Agent, for the account of each Bank, an amendment fee in an amount equal to one fifteenth of one percent (0.15%) of the sum of each such Bank's Revolving Credit Commitment on November 1, 2001 plus the aggregate principal amount of such Bank's Term Loans outstanding on November 1, 2001.

SECTION 16.5. CORPORATE ACTION. All corporate action necessary for the valid execution, delivery and performance by the New Subsidiary of this Amendment and each of the other related documents to which it is or is to become a party, shall have been duly and effectively taken, and evidence thereof reasonably satisfactory to the Agent shall have been provided to the Agent.

SECTION 16.6. CERTIFIED COPIES OF CHARTER DOCUMENTS; GOOD STANDING. The Agent shall have received from the New Subsidiary (i) a certified copy of its charter documents and by-laws and (ii) a good standing certificate for the New Subsidiary issued by the secretary of state of the jurisdiction under the laws of which such New Subsidiary is incorporated.

SECTION 16.7. INCUMBENCY CERTIFICATE. The Agent shall have received from the New Subsidiary an incumbency certificate, dated as of the date of this Amendment, signed by a duly authorized officer of the New Subsidiary, and giving the name and bearing a specimen signature of each individual who shall be authorized: (i) to sign, in the name and on behalf of the New Subsidiary, this Amendment; (ii) to make Revolving Credit Loan Requests and Conversion Requests and to apply for Letters of Credit; and (iii) to give notices and to take other action on its behalf under the Loan Documents.

SECTION 16.8. VALIDITY OF LIENS. The Security Documents shall be effective to create in favor of the Agent for the benefit of the Banks and the Agent a legal, valid and enforceable first (except for Permitted

Liens entitled to priority under applicable law) security interest in and lien upon the Collateral. All filings, recordings, deliveries of instruments and other actions necessary or desirable in the opinion of the Agent to protect and preserve such security interests shall have been duly effected. The Agent shall have received evidence thereof in form and substance satisfactory to the Agent.

SECTION 16.9. PERFECTION CERTIFICATES AND UCC SEARCH RESULTS. The Agent shall have received from the New Subsidiary a completed and fully executed Perfection Certificate.

SECTION 16.10. LEGAL OPINIONS. The Agent shall have received or made arrangements for the receipt within thirty days following the execution and delivery of this Amendment of a legal opinion from legal counsel to the New Subsidiary, which legal opinion shall be in form and substance satisfactory to the Agent. In the event that the Agent does not receive such legal opinion contemporaneously with the execution and delivery of this Amendment, the failure of the Agent to receive such a legal opinion within thirty days thereafter shall be considered an Event of Default under the Credit Agreement.

SECTION 16.11. NO MATERIAL ADVERSE CHANGE. The Majority Banks shall be satisfied that there shall have occurred no material adverse change in the business, operations, assets, management, properties, financial condition, income or prospects of the Borrowers and their Subsidiaries taken as a whole since February 4, 2001.

SECTION 16.12. REPRESENTATIONS TRUE; NO EVENT OF DEFAULT.

Each of the representations and warranties of any of the Borrowers and their Subsidiaries contained in this Amendment, the Credit Agreement, the other Loan Documents or in any document or instrument delivered pursuant to or in connection with this Amendment or the Credit Agreement shall be true as of the date as of which they were made (except to the extent of changes resulting from transactions contemplated or permitted by this Amendment or the Credit Agreement and the other Loan Documents and changes occurring in the ordinary course of business that singly or in the aggregate are not materially adverse, and to the extent that such representations and warranties relate expressly to an earlier date) and no Default or Event of Default shall have occurred and be continuing.

SECTION 16.13. PROCEEDINGS AND DOCUMENTS. All proceedings in connection with the transactions contemplated by this Amendment and all other documents incident hereto shall be reasonably satisfactory in substance and in form to the Agent.

SECTION 17. MISCELLANEOUS PROVISIONS.

(a) Except as otherwise expressly provided by this Amendment, all of the terms, conditions and provisions of the Credit Agreement shall remain the same. It is declared and agreed by each of the parties hereto that the Credit Agreement, as amended hereby, shall continue in full force and effect, and that this Amendment and the Credit Agreement shall be read and construed as one instrument.

(b) This Amendment is intended to take effect as an agreement under seal and shall be construed according to and governed by the laws of the Commonwealth of Massachusetts.

(c) This Amendment may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this Amendment, it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought.

(d) Each Borrower hereby agrees to pay to the Agent, on demand by the Agent, all reasonable out-of-pocket costs and expenses incurred or sustained by

the Agent in connection with the preparation of this Amendment (including legal fees).

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment as a document under seal as of the date first above written.

DAVE & BUSTERS, INC.

By: /s/ Charles Michel

Name: Charles Michel
Title: CFO

DAVE & BUSTER'S I, L.P.

By: DAVE & BUSTER'S, INC.,
as general partner

By: /s/ Charles Michel

Name: Charles Michel
Title: Treasurer

DAVE & BUSTER'S OF ILLINOIS, INC.

By: /s/ Charles Michel

Name: Charles Michel
Title: Treasurer

DAVE & BUSTER'S OF GEORGIA, INC.

By: /s/ Charles Michel

Name: Charles Michel
Title: Treasurer

DAVE & BUSTER'S OF PENNSYLVANIA, INC.

By: /s/ Charles Michel

Name: Charles Michel
Title: Treasurer

13

DANB TEXAS, INC.

By: /s/ Charles Michel

Name: Charles Michel

Title: Treasurer

DAVE & BUSTER'S OF MARYLAND, INC.

By: /s/ Charles Michel

Name: Charles Michel
Title: Treasurer

DAVE & BUSTER'S OF CALIFORNIA, INC.

By: /s/ Charles Michel

Name: Charles Michel
Title: Treasurer

DAVE & BUSTER'S OF COLORADO, INC.

By: /s/ Charles Michel

Name: Charles Michel
Title: Treasurer

DAVE & BUSTER'S OF NEW YORK, INC.

By: /s/ Charles Michel

Name: Charles Michel
Title: Treasurer

DAVE & BUSTER'S OF FLORIDA, INC.

By: /s/ Charles Michel

Name: Charles Michel
Title: Treasurer

14

DAVE & BUSTER'S OF PITTSBURGH, INC.

By: /s/ Charles Michel

Name: Charles Michel
Title: Treasurer

DAVE & BUSTER'S OF HAWAII, INC.

By: /s/ Charles Michel

Name: Charles Michel
Title: Treasurer

D&B REALTY HOLDING, INC.

By: /s/ Charles Michel

Name: Charles Michel
Title: Treasurer

D&B LEASING, INC.

By: /s/ Charles Michel

Name: Charles Michel
Title: Treasurer

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FLEET NATIONAL BANK, individually and
as Agent

By: /s/ J. Nicholas Cole

Name: J. Nicholas Cole
Title: Managing Director

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BANK OF AMERICA, N.A.

By: /s/ Santiago Marchant

Name: Santiago Marchant
Title: Senior Vice President

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BANK ONE, NA
(MAIN OFFICE, CHICAGO, ILLINOIS)

By: /s/ Wyatt Dickson

Name: Wyatt Dickson
Title: Vice President

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GUARANTY BANK

By: /s/ Robert S. Hays

Name: Robert S. Hays
Title: Senior Vice President

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TRANSAMERICA EQUIPMENT FINANCIAL
SERVICES CORPORATION

By: /s/ R.E. Linn

Name: R.E. Linn
Title: VP Region Credit Mgr

20

THE FROST NATIONAL BANK

By: /s/ Chris W. Holder

Name: Chris W. Holder
Title: Senior Vice President

21

HELLER FINANCIAL LEASING, INC.

By: /s/ Suzanne Stafford for Ron E. Lis

Name: Robert E. Lis
Title: Vice President, Portfolio Manager

22

ORIX FINANCIAL SERVICES, INC.

By: /s/ Terry Standifer

Name: R. Terry Standifer
Title: Vice President

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AGREEMENT OF SALE AND PURCHASE

by and between

DAVE & BUSTER'S, INC.,

a Missouri corporation,

as Seller

and

GENERAL ELECTRIC CAPITAL BUSINESS
ASSET FUNDING CORPORATION,

as Purchaser

Corporate Headquarters
&
Warehouse
Dallas, Texas

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Exhibits

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

AGREEMENT OF SALE AND PURCHASE

THIS AGREEMENT OF SALE AND PURCHASE (this "AGREEMENT") is made by and between DAVE & BUSTER'S, INC., a Missouri corporation (the "SELLER"), and GENERAL ELECTRIC CAPITAL BUSINESS ASSET FUNDING CORPORATION (the "PURCHASER").

WITNESSETH:

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

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

ARTICLE I.
SALE AND PURCHASE: PROPERTY

Section 1.1 Sale and Purchase.

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

- (a) All of that certain land more particularly described on Exhibit A attached hereto (the "LAND"), including all structures, improvements, and fixtures (the "IMPROVEMENTS") thereon. The Improvements consist of an approximately 47,000 square foot, two-story office building, and an approximately 30,000 square foot single-story warehouse, all located at 2481 Manana Drive, Dallas, Texas. The Land and the Improvements are sometimes referred to herein collectively as the "REAL PROPERTY";
- (b) All right, title, and interest, if any, of Seller, in and to any land lying in the bed of any dedicated street, road, or access way, opened or proposed, in front of, at a side of or adjoining the Real Property (the "PROPERTY RIGHTS");
- (c) All right, title, and interest of Seller, reversionary or otherwise, in and to all easements in or upon the Land and all other rights and appurtenances belonging or in anywise pertaining thereto, if any (the "APPURTENANCES");
- (d) Any and all equipment and machinery owned by Seller and presently affixed or attached to, or sufficiently placed or situated upon the Real

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Property so as to become fixtures, and used in connection with the ownership, operation, and occupancy of the Real Property, but specifically excluding items of personal property owned by any third party (the "PERSONALTY");

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

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

ARTICLE II. CONSIDERATION

Section 2.1 Purchase Price.

The purchase price (the "PURCHASE PRICE") to be paid by Purchaser to Seller for the sale and conveyance of the Property is Seven Million Seven Hundred Ninety Thousand and No/100 Dollars (\$7,790,000), which is payable to Seller at the closing of the transaction contemplated hereby (the "CLOSING") by wire transfer and which funds must be delivered in a manner to permit the Closing Agent (defined in Section 2.2) to deliver

good funds to the Seller or its designee on the Closing Date (defined in Section 6.1).

Section 2.2 Earnest Money.

- (a) It is a condition precedent to the effectiveness of this Agreement that within five (5) days of the execution of this Agreement by Purchaser, Purchaser shall deposit with Republic Title of Texas, Inc., 2626

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Howell Street, 10th Floor, Dallas, Texas 75204, Attn: Paulette Hubbard (the "CLOSING AGENT"), by wire transfer or delivery of a cashier's check, immediately available federal funds in the amount of Ten Thousand Dollars (\$10,000) (along with any accrued interest, the "EARNEST MONEY").

- (b) On the Closing Agent's receipt of the Earnest Money, the Closing Agent shall deposit such Earnest Money into an interest-bearing money market account maintained at a federally insured bank or savings and loan association located in Dallas County, Texas. Such account shall have no penalty for early withdrawal, and Purchaser agrees and acknowledges that Seller shall have no responsibility or liability for any loss of the Earnest Money or any portion thereof. If the Earnest Money to be delivered pursuant to Section 2.2(a) is not timely delivered by Purchaser to the Closing Agent, Seller may terminate this Agreement by delivering written notice of such termination to Purchaser. Upon said termination, (i) neither Seller nor Purchaser shall have any further obligation or liability to the other hereunder, except as provided in Sections 5.3. and 6.4 hereof, and (ii) Purchaser shall deliver to Seller all of the Documents and Purchaser's Information (as defined in Section 5.2(c)).
- (c) Upon execution hereof, Purchaser shall deliver to Seller the sum of \$100.00 which shall be independent consideration for this Agreement (the "INDEPENDENT CONSIDERATION").
- (d) If the transaction contemplated hereby is consummated in accordance with the terms and provisions hereof, the Earnest Money shall be credited against the Purchase Price at Closing. All interest earned shall be reported to the Internal Revenue Service as income of Purchaser and Purchaser shall promptly execute all forms reasonably requested by the Closing Agent with respect thereto.
- (e) The balance of the Purchase Price, as adjusted by the prorations and credits specified herein, less the Earnest Money and less the amount of the Note, shall be paid on the Closing Date in t/he manner set forth in Section 6.2.

ARTICLE III. SURVEY

Section 3.1 Survey.

Seller shall deliver to Purchaser, simultaneously with the execution hereof (as defined in Section 11.3), a copy of the as-built survey (the "SURVEY") of the Real Property in Seller's possession. Purchaser shall be solely responsible for ordering

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any updates to the Survey that it desires, and shall do so in a diligent and timely manner. Seller shall pay for the cost of the updated Survey.

ARTICLE IV.
TITLE

Section 4.1 Title Commitment.

- (a) Delivery. Simultaneously with the execution hereof, Seller shall deliver to Purchaser a copy of its owner's title policy covering the Property. Seller shall, within ten (10) days of the Effective Date, cause First American Title Insurance Company (the "TITLE COMPANY"), acting through the Closing Agent, to furnish to Purchaser a title commitment (the "COMMITMENT") along with copies of all exception documents, by the terms of which Title Company agrees to issue to Purchaser at Closing a Texas Standard Coverage Owner's Policy of Title Insurance (the "TITLE POLICY") in the amount of the Purchase Price and insuring Purchaser's fee simple title to the Real Property to be good and indefeasible, subject to the Permitted Exceptions and the other terms of the Title Policy.
- (b) Objections and Cure. If the Title Commitment or Survey or their updates disclose exceptions to title or any other matter objectionable to Purchaser, Purchaser shall so notify Seller in writing (the "OBJECTION NOTICE") on or before the tenth (10th) day following the date of the last to be received of the Title Commitment and Survey, and Seller shall have fifteen (15) days from the date of Seller's actual receipt of the Objection Notice in which it may, but shall have no obligation to have each such objectionable exception to title or Survey removed or correct each such other matter, in each case to the reasonable satisfaction of Purchaser. Notwithstanding the foregoing, Seller shall have each mortgage and lien removed, and shall also cause any other matter than can be removed by payment of \$10,000 or less to be removed prior to the Inspection Period Expiration Date. If, within the time specified, Purchaser does not deliver an Objection Notice, all title and survey matters shall be deemed approved. If, within the time specified, Seller does not have each such objectionable exception removed or corrected, Purchaser must, as its sole and exclusive remedy, either (i) terminate this Agreement, in which event this Agreement, without further action of the parties, shall become null and void and neither party shall have any further rights or obligations under this Agreement, except in accordance with Sections 5.3 and 6.4, and the Earnest Money shall be returned to Purchaser, or (ii) elect to accept title to the Property as it then exists, without reduction to the Purchase Price. If Purchaser fails to timely make either such election, Purchaser shall be deemed to have elected option (ii).

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- (c) Permitted Exceptions. As used in this Agreement, the term "PERMITTED EXCEPTIONS" shall mean all matters either shown on the Survey or in the Title Commitment, and all matters which Purchaser has accepted or has been deemed to accept. Seller has no obligation to ensure that the Title Company will provide any endorsements to the Title Policy, including, without limitation, any deletion of the printed survey exception, all of which, if Purchaser elects to obtain any such endorsements, shall be Purchaser's responsibility and shall be at Purchaser's expense.
- (d) Termination. In the event of termination of this Agreement pursuant to this Section 4.1, the Earnest Money shall be delivered to Purchaser, except for the Independent Consideration, which shall be paid to Seller, and thereafter neither party shall have any further rights or obligations hereunder, except for the rights and obligations arising pursuant to Sections 5.3 and 6.4.

ARTICLE V.
INSPECTION

Section 5.1 Inspection Period.

Seller, subject to the provisions of the Lease, shall permit Purchaser and its authorized agents and representatives to enter upon the Real Property at all reasonable times during normal business hours to inspect and conduct reasonably necessary tests which are approved in writing by Seller, which approval shall not be unreasonably withheld. Such entry and inspections may be conducted only during the period (the "INSPECTION PERIOD") commencing on the Effective Date and ending at 5:00 p.m., Dallas, Texas time on the date (the "INSPECTION PERIOD EXPIRATION DATE") that is forty-five (45) days following the Effective Date; provided, however, that so long as this Agreement has not been terminated, Purchaser shall have the right, subject to the operations of the restaurant, to enter upon the Real Property at all reasonable times during normal business hours subsequent to the Inspection Period Expiration Date and prior to the Closing for the purposes of continuing its inspection of the same so long as Purchaser complies with each of the provisions of this Agreement, including, without limitation, the provisions of this Article V relating to such entry and inspection. Notwithstanding the foregoing, in no event shall such entry and inspection subsequent to the Inspection Period Expiration Date serve to extend Purchaser's right to terminate this Agreement on or before the Inspection Period Expiration Date as provided in Section 5.4 hereof. Purchaser shall notify Seller, in writing, of its intention, or the intention of its agents or representatives, to enter the Real Property at least forty-eight (48) hours prior to such intended entry, and obtain Seller's prior written consent to any tests to be conducted thereon. At Seller's option, Seller may be present for any inspection or test.

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Section 5.2 Document Review.

- (a) Documents. Within three (3) days after the Effective Date, Seller shall deliver to Purchaser the following, if in the possession of Seller (collectively, the "DOCUMENTS"):
 - (i) copies of any Plans;
 - (ii) to the extent allowed by the author, copies of all existing soil, engineering, architectural, and environmental reports covering the Property in Seller's possession;
 - (iii) copies of all Service Contracts, if any; and
 - (iv) copies of all Permits in Seller's possession.
- (b) Return of Documents. Purchaser shall return all of the Documents, any and all copies Purchaser has made of the Documents, and all copies of any studies, reports, or test results obtained by Purchaser (and actually paid for by Seller) in connection with its inspection of the Property (collectively, the "PURCHASER'S INFORMATION") on the earlier to occur of (i) such time as Purchaser determines that it shall not acquire the Property, or (ii) such time as this Agreement is terminated for any reason.
- (c) No Representation or Warranty by Seller. Purchaser hereby acknowledges that Seller has not made and does not make any warranty or representation regarding the truth, accuracy, or completeness of the Documents or the source(s) thereof, and that Seller has not undertaken any independent investigation as to the truth, accuracy, or completeness of the Documents and is providing the Documents solely as an accommodation to Purchaser. Seller expressly disclaims and Purchaser waives any and all liability for representations or warranties, express or implied, statements of fact, and other matters contained in the Documents, or for any omissions from the Documents, or in any other written or oral communications transmitted or made

available to Purchaser. Except as provided in Section 8.2 and the Environmental Certificate (as hereinafter defined) Purchaser shall rely solely upon its own investigation with respect to the Property, including, without limitation, the Property's physical, environmental, or economic condition, compliance or lack of compliance with any ordinance, order, permit, or regulation or any other attribute or matter relating thereto.

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Section 5.3 Inspection Obligations.

- (a) Purchaser's Responsibilities. In conducting any inspections, investigations, examinations, or tests of the Property, Purchaser and its agents and representatives shall: (i) not interfere with the operation and maintenance of the Property; (ii) not damage any part of the Property or any personal property; (iii) not injure or otherwise cause bodily harm to Seller or its agents, guests, invitees, contractors and employees; (iv) maintain commercial general liability (occurrence basis) insurance in terms and amounts reasonably satisfactory to Seller covering any accident arising in connection with the presence of Purchaser, its agents, and its representatives on the Property, (v) promptly pay when due the costs of all tests, investigations, and examinations done with regard to the Property; (vi) not permit any liens to attach to the Real Property by reason of the exercise of its rights hereunder; (vii) fully restore the Land and the Improvements to the condition in which the same were found before any such inspection or tests were undertaken; (viii) not reveal or disclose any information obtained during the Inspection Period concerning the Property and the Documents to anyone outside Purchaser's organization, except in accordance with the confidentiality standards set forth in Section 5.2(b) hereof, and (ix) deliver to Seller a copy of all Purchaser's Information.
- (b) PURCHASER'S AGREEMENT TO INDEMNIFY. PURCHASER SHALL INDEMNIFY, DEFEND, AND HOLD SELLER HARMLESS FROM AND AGAINST ANY AND ALL LIENS, CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, AND EXPENSES (INCLUDING REASONABLE LEGAL FEES AND EXPENSES) ARISING OUT OF PURCHASER'S INSPECTIONS OR TESTS OR ANY VIOLATION OF THE PROVISIONS OF THIS SECTION 5.3. THIS INDEMNITY SHALL SURVIVE THE CLOSING OR EARLIER TERMINATION OF THIS AGREEMENT.

Section 5.4 Right of Termination.

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

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

Section 5.5 Property Conveyed "AS IS".

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

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

- (b) SALE "AS IS". PURCHASER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY OF ITS AGENTS AND ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS HAVE BEEN MADE, EXCEPT AS PROVIDED IN SECTION 8.2 AND THE ENVIRONMENTAL CERTIFICATE. PURCHASER REPRESENTS THAT IT IS A KNOWLEDGEABLE, EXPERIENCED, AND SOPHISTICATED PURCHASER OF REAL ESTATE AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF PURCHASER'S CONSULTANTS IN PURCHASING THE PROPERTY. PURCHASER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AS

PURCHASER DEEMS NECESSARY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON SAME. UPON CLOSING, PURCHASER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO,

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

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

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explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls (pcbs), radon gas, urea formaldehyde, asbestos, lead or electromagnetic waves.

Section 5.6 Investigative Studies.

As additional consideration for the transaction contemplated herein, Purchaser agrees that it will provide to Seller, immediately following the receipt of same by Purchaser, copies of any and all reports, tests, or studies involving structural or geologic conditions or environmental, hazardous waste, or Hazardous Substances contamination of the Property which reports, tests or studies shall be addressed to both Seller and Purchaser; provided, however, Purchaser shall have no obligation to cause any such tests or studies to be performed

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

Section 5.7 Purchaser Represented by Counsel.

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

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ARTICLE VI. CLOSING

Section 6.1 Closing Date.

The Closing shall be held in the offices of Closing Agent, or such other location as may be mutually agreed upon by Seller and Purchaser, at 10:00 a.m. (Dallas, Texas time) on the fifteenth (15th) day following the Inspection Period Expiration Date (the "CLOSING DATE"), or at such other time as mutually agreed by Seller and Purchaser.

Section 6.2 Closing Matters.

- (a) Seller's Deliveries. At Closing, expressly conditioned upon Purchaser's performance of its obligations under Section 6.2(b), Seller shall deliver:
 - (i) possession of the Property, subject to the Permitted Exceptions;
 - (ii) copies of all Permits, if any;
 - (iii) an executed and acknowledged special warranty deed (the "DEED") in the form set forth in Exhibit B conveying the Real Property subject to the Permitted Exceptions;
 - (iv) a bill of sale in substantially the form of Exhibit C (the "BILL OF SALE"), executed and acknowledged by Seller, conveying without warranty the Personalty;
 - (v) an executed Assignment and Assumption of Warranties in substantially the form of Exhibit E (the "ASSIGNMENT OF WARRANTIES");

- (vi) a certificate of Seller respecting the non-foreign status of Seller in the form set forth in Exhibit D attached hereto;
- (vii) the originals of the Warranties, Service Contracts, Plans and Permits in Seller's possession;
- (viii) an executed Lease between Purchaser and Dave & Buster's, Inc. ("TENANT") in the form attached hereto as Exhibit F (the "LEASE");
- (ix) an opinion of Seller's counsel, in form and substance reasonably acceptable to Purchaser, concerning Tenant and the Lease;
- (x) the Environmental Certificate in substantially the form of Exhibit G (the "ENVIRONMENTAL CERTIFICATE"); and

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- (xi) such other documents as may be reasonably required by Closing Agent or Purchaser, including, but not limited to, documents evidencing the authority of Seller to consummate the sale of the Property in accordance with this Agreement and designating those persons authorized to execute and deliver all necessary documents at Closing.
- (b) Purchaser's Deliveries. At Closing, expressly conditioned upon Seller's performance of its obligations under Section 6.2(a), Purchaser shall deliver:
- (i) the remaining funds for the Purchase Price to the Closing Agent, sent by wire transfer of immediately available federal funds to the account designated by Closing Agent and available for disbursement no later than 11:00 a.m. (Dallas, Texas time) on the Closing Date;
 - (ii) the Assignment of Warranties, duly executed and acknowledged by Purchaser;
 - (iii) the Lease, duly executed and acknowledged by Purchaser; and
 - (iv) such other documents as may be reasonably required by Seller or Closing Agent, including, but not limited to, a certified copy of documents evidencing the authority of Purchaser to consummate the purchase of the Property in accordance with this Agreement and designating those persons authorized to execute and deliver all necessary documents at Closing.
- (c) Prorations. Ad valorem taxes will not be prorated. Tenant is solely liable for all taxes under the Lease.
- (d) Preparation of Documents. All of the documents that are not attached hereto as exhibits to be executed at Closing shall be in form prepared to the reasonable satisfaction of Seller and Purchaser.

Section 6.3 Closing Costs.

Except as otherwise provided in Section 7.3, each party shall be responsible for the payment of its own attorneys' fees incurred in connection with the transaction that is the subject of this Agreement. Any escrow fee charged by the Title Company shall be paid by Seller. Except as otherwise expressly and specifically provided to the contrary in this Section 6.3 or otherwise in this Agreement, Seller shall pay the filing fees for recording the Deed, the basic premium for the Title

Policy, the escrow fees, the cost of the updated Survey, and shall reimburse Purchaser for reasonable third-party costs actually incurred by Purchaser in its inspection of the Property, but excluding any ADA review. Except as otherwise expressly provided to the contrary in this Section 6.3 or otherwise in this Agreement, Purchaser shall pay any and all other costs, including, without limitation, one-half (1/2) of the escrow fees, all premiums associated with extended coverage or any endorsements to the Title Policy, and all other closing costs of any nature and costs of any inspections or tests Purchaser authorizes or conducts.

Section 6.4 Real Estate Commission.

Seller agrees to pay, at Closing, to Staubach Retail Services, Inc. (the "BROKER"), a real estate commission in accordance with a separate written contract. Seller and Purchaser each represent and warrant to the other that no real estate brokerage commission is payable to any person or entity in connection with the transaction contemplated hereby (other than as described above in this Section 6.4), and each agrees to and does hereby indemnify and hold the other harmless against the payment of any commission to any person or entity (other than as described above in this Section 6.4) claiming by, through or under Seller or Purchaser, as applicable. This indemnification shall extend to any and all claims, liabilities, costs, and expenses (including reasonable attorneys' fees and litigation costs) arising as a result of such claims and shall survive the Closing.

ARTICLE VII. REMEDIES

Section 7.1 Seller's Remedies.

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

Section 7.2 Purchaser's Remedies.

In the event Seller fails to perform its obligations pursuant to this Agreement (other than a breach of representation or warranty) for any reason except failure by Purchaser to perform hereunder, Purchaser may elect, as its sole remedy (i) to

terminate this Agreement by giving Seller timely written notice of such election prior to or at Closing and recover the Earnest Money in accordance with Section 7.4 (less the Independent Consideration which shall be paid to Seller), and recover the Default Payment (as hereinafter defined) or (ii)

seek the remedy of specific performance against Seller. As used herein, "DEFAULT PAYMENT" shall mean a sum of money equal to Purchaser's third party expenses actually incurred in the negotiation of this Agreement, its due diligence regarding the Property, and all other expenses attributable to this Agreement to the date of Seller's default, not to exceed \$50,000. In the event that Purchaser elects to recover the Default Payment, it shall have first given Seller ten (10) days' written notice and opportunity to cure its default (except for failure to convey title at Closing). In the event of a material breach of representation or warranty by Seller discovered by Purchaser after Closing, Purchaser's remedies are limited to those described in Section 8.4. IN NO EVENT SHALL SELLER, ITS DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, OWNERS, OR AFFILIATES, ANY OFFICER, DIRECTOR, EMPLOYEE, ATTORNEY, OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY, BEYOND ITS INTEREST IN THE REAL PROPERTY, FOR ANY CLAIM, CAUSE OF ACTION, OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROPERTY, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY, OR OTHERWISE (COLLECTIVELY, THE "CLAIMS"), AND PURCHASER HEREBY WAIVES THE CLAIMS.

Section 7.3 Attorneys' Fees.

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

Section 7.4 Disposition of Earnest Money.

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

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awarded the Earnest Money or if the Earnest Money is distributed in part to both parties, then in the inverse proportion of such distribution.

ARTICLE VIII. REPRESENTATIONS, WARRANTIES, AND COVENANTS

Section 8.1 Purchaser's Representations and Warranties.

- (a) Authority of Purchaser. Purchaser represents and warrants that Purchaser has full right, power, and authority to enter into this Agreement and, at Closing, will have full right, power and authority to consummate the sale provided for herein.
- (b) No Bankruptcy or Receivership.

That at no time on or before the Closing Date, shall any of the following have occurred with respect to Purchaser, and if

Purchaser is a partnership, to any general partners of Purchaser: (i) the commencement of a case under Title 11 of the United States Code, as now constituted or hereafter amended, or under any other applicable federal or state bankruptcy law or other similar law; (ii) the appointment of a trustee or receiver of any property interest; (iii) an assignment for the benefit of creditors; (iv) an attachment, execution or other judicial seizure of a substantial property interest; (v) the taking of, failure to take, or submission to any action indicating an inability to meet its financial obligations as they accrue; or (vi) a dissolution or liquidation, death or incapacity.

Section 8.2 Seller's Representations and Warranties.

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

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- (d) There is no pending or, to Seller's knowledge, threatened litigation or administrative proceeding affecting the ownership or use of the Property.
- (e) There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under other debtor relief laws contemplated by, pending, or threatened against Seller.
- (f) Seller has no reason to believe that any of the Documents are materially false or misleading.

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

Section 8.3 Seller's Covenants. Seller hereby covenants and agrees with Purchaser as follows:

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

personalty from the Improvements without replacing them with new items.

Section 8.4 Survival of Representations and Warranties.

Except as otherwise expressly set forth herein, the representations and warranties set forth in Section 8.2 shall be continuing and shall be true and correct on and as of the Closing Date with the same force and effect as if made at that time, and such representations and warranties shall survive the Closing for a period of one (1) year, at which time they shall expire and terminate and be of no further force and effect unless a claim for breach thereof has been instituted within such one (1) year period; PROVIDED, HOWEVER, Purchaser shall have the right to bring an

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action thereon only if Purchaser has given the Seller written notice of the circumstances giving rise to the alleged breach within such one (1) year period. Purchaser hereby waives and relinquishes all right to seek punitive or consequential damages.

Section 8.5 Knowledge Standard.

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

ARTICLE IX. CONDEMNATION

Section 9.1 Condemnation.

If, prior to Closing, any governmental authority or other entity having condemnation authority shall institute an eminent domain proceeding or take any steps preliminary thereto (including the giving of any direct or indirect notice of intent to institute such proceedings) with regard to a Material Portion (as hereinafter defined) of the Real Property, and the same is not dismissed on or before ten (10) days prior to Closing, Purchaser shall be entitled, as its sole remedy, to terminate this Agreement by giving written notice to Seller on or before the earlier to occur of (a) ten (10) days following notice by Seller to Purchaser of such condemnation, or (b) the Closing Date. In the event Purchaser does not terminate this Agreement pursuant to the preceding sentence, Purchaser shall be conclusively deemed to have elected to close the acquisition of the Property subject to such condemnation, without any reduction in Purchase Price, and waives any right to terminate this Agreement as a result thereof. For purposes of this Section 9.1, a "MATERIAL PORTION" shall mean that portion of the Real Property which, if taken or condemned, would reduce the value of the Property by not less than \$250,000.00. Notwithstanding anything to the contrary herein, if any eminent domain proceeding is instituted (or notice of which is given) solely for the taking of any subsurface rights for utility easements or for any right-of-way

easement, and the surface may, after such taking, be used in substantially the same manner as though such rights had not been taken, Purchaser shall not be entitled to terminate this Agreement as to any part of the Real Property, but any award resulting therefrom shall be the exclusive property of Purchaser upon Closing. In the event Purchaser elects to terminate this Agreement under this Section 9.1, the Earnest Money (less the Independent Consideration) shall be returned to Purchaser, and neither party to this Agreement shall thereafter have any further rights or obligations hereunder except as otherwise provided in Sections 5.3 and 6.4 hereof. If Purchaser waives (or is deemed to have waived) the right to terminate this Agreement as a result of such a condemnation, despite such condemnation, Seller and Purchaser shall close this Agreement in accordance with the terms hereof with no reduction in the Purchase Price, and Seller shall assign to Purchaser at Closing all of Seller's right, title and interest in and to all proceeds resulting or to result from said condemnation.

ARTICLE X.
RISK OF LOSS

Section 10.1 Risk of Loss.

Until Closing, Seller alone shall bear the risk of loss should there be damage to any of the Improvements by fire or other casualty (collectively, "CASUALTY"). If, prior to the Closing, any of the Improvements shall be damaged by a Casualty, Seller shall deliver to Purchaser written notice ("CASUALTY LOSS NOTICE") of such Casualty after it has made its determination provided for in Section 10.2 hereof.

Section 10.2 Material Loss.

For the purposes of Sections 10.2 and 10.3, "MATERIAL DAMAGE" shall mean damage to the Improvements of such nature that the cost of restoring the same to their condition prior to the Casualty will, in Seller's determination, exceed \$250,000.00, whether or not such damage is covered by insurance. If, in Seller's determination, the Improvements have sustained Material Damage by a Casualty, Seller may, at its option, terminate this Agreement by delivering written notice to Purchaser on or before Closing, and neither party hereto shall have any further rights or obligations hereunder (except pursuant to Sections 5.3 and 6.4 hereof). In the event Seller does not so terminate this Agreement, Purchaser may, at its sole option, within fifteen (15) days after delivery of the Casualty Loss Notice, either (a) terminate this Agreement by delivering written notice of same to Seller, or (b) waive its right of termination and proceed to close this transaction in accordance with the terms hereof without reduction to the Purchase Price (the "WAIVER OPTION"). Failure of Purchaser to deliver written notice of termination within said fifteen (15) day period shall be conclusively deemed to be an election by Purchaser of the Waiver Option. In the event Seller or Purchaser elects to terminate this Agreement under this Section 10.2, the Earnest Money (less the

Independent Consideration) shall be returned to Purchaser and thereafter neither party to this Agreement shall thereafter have any further rights or obligations hereunder, except as otherwise provided in Sections 5.3 and 6.4 hereof. If Purchaser elects the Waiver Option, then Seller shall repair the Improvements to substantially their condition prior to such damage.

Section 10.3 Non-Material Loss.

In the event, in Seller's determination, the Improvements have sustained less than Material Damage by a Casualty, the rights and

obligations of the parties shall not be affected thereby and Seller shall repair the Improvements to substantially their condition prior to such damage.

Section 10.4 Delay in Completion of Repairs.

If Seller has undertaken repairs and if the repairs cannot be completed by the Closing Date, Seller shall postpone the Closing Date until five (5) days following substantial completion of the repairs.

Section 10.5 Postponement of Closing.

If, as a result of a Casualty any determination, election or agreement required by the terms of this Article X is not made by the Closing Date, the Closing Date shall be extended until twenty (20) days after said determination, election or agreement is made, subject to such further extension as may be allowed by the terms of this Article X, notwithstanding anything in Section 6.1 of this Agreement to the contrary; provided, however, if said determination, election or agreement has not been made within thirty (30) days following the originally scheduled Closing Date, this Agreement shall automatically terminate, and neither party shall have any further rights or obligations hereunder (except pursuant to Sections 5.3 and 6.4 hereof) and the Earnest Money (less the Independent Consideration) shall be returned to Purchaser.

ARTICLE XI. MISCELLANEOUS

Section 11.1 Entire Agreement.

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

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Section 11.2 Agreement Binding on Parties; Assignment.

This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties hereto. Purchaser may assign its rights under this Agreement only upon the following conditions: (i) all of the Earnest Money must have been delivered in accordance with Section 2.2, (ii) the Inspection Period shall be deemed to have ended, (iii) Purchaser shall remain primarily liable for the performance of Purchaser's obligations, and (iv) a copy of the fully executed written assignment and assumption agreement along with the taxpayer identification number of the proposed assignee, shall be delivered to Seller at least ten (10) days prior to Closing. No transfer or assignment in violation of this Section 11.2 is valid or enforceable.

Section 11.3 Effective Date.

The Effective Date of this Agreement shall be the date on which the Closing Agent acknowledges its receipt of a copy of this Agreement executed by both Seller and Purchaser and receipt of the Earnest Money. The execution hereof by Seller shall constitute an offer by Seller to Purchaser to sell the Property on the terms and conditions herein stated, which must be accepted by Purchaser on or before September 26, 2001. If Seller's offer is not timely accepted, this Agreement shall thereafter be null and void.

Section 11.4 Notice.

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

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

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

Seller: Dave & Buster's, Inc.
2481 Manana Drive
Dallas, Texas 75220
Attn: Chas Michel
Fax: (214) 357-1536
Email: chas_michel@daveandbusters.com

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

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

Purchaser: General Electric Capital Business
Asset Funding Corporation
10900 NE 4th Street, Suite 500
Bellevue, Washington 98004
Attn: Patrick J. Pearson
Fax: (425) 450-3498
Email: pat.pearson@gecapital.com

With a copy to: Dechert Price & Rhoads
Ten Post Office Square South
Boston, Massachusetts 02109
Attn: Lewis A. Burleigh
Fax: (617) 426-6567
Email: lewis.burleigh@dechert.com

Closing Agent/
Title Company: Republic Title of Texas, Inc.
2626 Howell Street
Tenth Floor
Dallas, Texas 75204
Attn: Paulette Hubbard
Fax: (214) 855-8889
Email: phubbard@republictitle.com

Section 11.5 Time of the Essence.

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

Section 11.6 Place of Performance.

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

Section 11.7 Currency.

All dollar amounts are expressed in United States currency.

Section 11.8 Section Headings.

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

Section 11.9 Obligations.

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

Section 11.10 Business Days.

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

Section 11.11 No Recordation.

Without the prior written consent of Seller, there shall be no recordation of either this Agreement or any memorandum hereof, or any affidavit pertaining hereto and

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

Section 11.12 Multiple Counterparts.

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

executed by facsimile signature.

Section 11.13 Severability.

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

Section 11.14 Taxpayer ID.

Purchaser's Taxpayer ID Number is (to be provided prior to Closing).

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Section 11.15 Section 1031 Exchange.

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

SELLER:

DAVE & BUSTER'S, INC.,
a Missouri corporation

DATE: September 26, 2001

By: /s/ Chas Michel

Name: Chas Michel

Title: Chief Financial Officer

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PURCHASER:

GENERAL ELECTRIC CAPITAL BUSINESS
ASSET FUNDING CORPORATION

DATE: September 25, 2001

By: /s/ Linda K. Bracken

Name: Linda K. Bracken

Title: Vice President

JOINDER BY CLOSING AGENT

Republic Title of Texas, Inc., referred to in this Agreement as the Closing Agent hereby acknowledges that it received this Agreement executed by Seller and Purchaser and the Earnest Money on the 1st day of October, 2001 (the "EFFECTIVE DATE"), and accepts the obligations of the of the Closing Agent as set forth herein. The Closing Agent hereby agrees to hold and distribute the Earnest Money in accordance with the terms and provisions of this Agreement.

REPUBLIC TITLE OF TEXAS, INC.

By: /s/ Carol Hall

Name: Carol Hall

Title: Escrow Officer

=====

LEASE AGREEMENT

By and Between

GENERAL ELECTRIC CAPITAL BUSINESS
ASSET FUNDING CORPORATION,
a Delaware corporation

(As Landlord)

AND

DAVE & BUSTER'S, INC.,
a Missouri corporation

(As Tenant)

October 18, 2001

Corporate Headquarters/Warehouse
Dallas, Texas

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "LEASE") made as of the 18th day of October 2001, by and between GENERAL ELECTRIC CAPITAL BUSINESS ASSET FUNDING CORPORATION, a Delaware corporation, having an office at 10900 NE 4th Street, Suite 500, Bellevue, WA 98004 ("LANDLORD"), and DAVE & BUSTER'S, INC., a Missouri corporation, having its principal office at 2481 Manana Drive, Dallas, Texas 75220 ("TENANT").

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

1. Demise of Premises. Landlord hereby demises and leases to Tenant and Tenant hereby takes and leases from Landlord for the term and upon the provisions hereinafter specified the following described property (the "LEASED

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

2. Certain Definitions.

"ADDITIONAL RENT" shall mean Additional Rent as defined in Paragraph 31.

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

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

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

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

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

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

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

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

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

"FINANCIAL STATEMENTS" shall mean, for so long as Tenant is a publicly traded company, Form 10 Q for quarterly reports, and Form 10K for annual reports. If the Tenant is no longer publicly traded, quarterly reports shall be unaudited and annual reports shall be audited, and each shall be in accordance with generally accepted accounting principles, consistently applied.

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

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

"INSURANCE REQUIREMENT" or "INSURANCE REQUIREMENTS" shall

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

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

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

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

"LEGAL REQUIREMENT" or "LEGAL REQUIREMENTS" shall mean, as the case may be, any one or more of all present and future laws, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, even if unforeseen or extraordinary, of every duly constituted governmental authority or agency (but excluding those which by their terms are not applicable to and do not impose any obligation on Tenant, Landlord, or the Leased Premises) and all covenants, restrictions and conditions now of record which may be applicable to Tenant,

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Landlord (with respect to the Leased Premises) or to all or any part of or interest in the Leased Premises, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Leased Premises, even if compliance therewith (i) necessitates structural changes or improvements (including changes required to comply with the "Americans with Disabilities Act of 1990") or results in interference with the use or enjoyment of the Leased Premises or (ii) requires Tenant to carry insurance other than as required by the provisions of this Lease.

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

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

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

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

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

"NOTE" or "NOTES" shall mean a Promissory Note or Notes hereafter executed from Landlord to Lender, which Note or Notes will be secured

by a Mortgage and an assignment of leases and rents.

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

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

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

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

"STATE" shall mean the State of Texas.

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

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

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

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

3. Title and Condition.

a. The Leased Premises are demised and let subject to (i) the Permitted Encumbrances, (ii) all Legal Requirements and Insurance Requirements, including any existing violation of any thereof, and (iii) the condition of the Leased Premises as of the commencement of the Term without representation or warranty by Landlord; it being understood and agreed, however, that the recital of the Permitted Encumbrances herein shall not be construed as a revival of any thereof which for any reason may have expired.

b. LANDLORD LEASES AND WILL LEASE AND TENANT TAKES AND WILL TAKE THE LEASED PREMISES "AS IS", AND TENANT ACKNOWLEDGES THAT LANDLORD (WHETHER ACTING AS LANDLORD HEREUNDER OR IN ANY OTHER CAPACITY) HAS NOT MADE AND WILL NOT MAKE, NOR SHALL LANDLORD BE DEEMED TO HAVE MADE, ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE LEASED PREMISES, INCLUDING ANY WARRANTY OR REPRESENTATION AS TO ITS FITNESS FOR USE OR PURPOSE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE, AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT, AS TO LANDLORD'S TITLE THERETO, OR AS TO VALUE, COMPLIANCE WITH SPECIFICATIONS, LOCATION, USE, CONDITION, MERCHANTABILITY, QUALITY, DESCRIPTION, DURABILITY OR OPERATION, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY TENANT. Tenant acknowledges

that the Leased Premises are of its selection and that the Leased Premises have been inspected by Tenant and are satisfactory to it. In the event of any defect or deficiency in any of the Leased Premises of any nature, whether patent or latent, Landlord shall not have any responsibility or liability with respect thereto or for any incidental or consequential damages

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(including strict liability in tort). The provisions of this Paragraph 3 (b) have been negotiated, and the foregoing provisions are intended to be a complete exclusion and negation of any warranties by Landlord, express or implied, with respect to any of the Leased Premises, arising pursuant to the Uniform Commercial Code as adopted by the State or any other law or regulation now or hereafter in effect or otherwise.

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

d. Landlord agrees to enter into, at Tenant's expense, such easements, covenants, waivers, approvals or restrictions for utilities, parking or other matters as desirable for operation of the Leased Premises or properties adjacent thereto (collectively, "EASEMENTS") as reasonably requested by Tenant, subject to Lender's and Landlord's approval of the form thereof, not to be unreasonably withheld or delayed; provided, however, that no such Easement shall result in any diminution in the value or utility of the Leased Premises for its Use (as hereinafter defined), and further provided that no such Easement shall render the use of the Leased Premises dependent upon any other property or condition the use of the Leased Premises upon the use of any other property, each of which Tenant shall certify to Landlord and Lender in writing delivered with Tenant's request with respect to such Easement. Tenant's request shall also include Tenant's written undertaking acknowledging that Tenant shall remain liable hereunder as principal and not merely as a surety or guarantor notwithstanding the establishment of any Easement.

e. Tenant agrees that Tenant is obligated to and shall perform all obligations of the owner of the Leased Premises under and pay all expenses which the owner of the Leased Premises may be required to pay in accordance with any reciprocal easement agreement or any other agreement or document of record now (if expressly consented to in writing by Tenant) or in the future affecting the Leased Premises (herein referred to collectively as the "REA"), and that Tenant shall comply with all of the terms and conditions of any REA during the Term of this

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Lease. Tenant further covenants and agrees to indemnify, defend, and hold harmless Landlord and Lender against any claim, loss, or damage suffered by Landlord or Lender by reason of Tenant's failure to perform any obligations or pay any expenses as required under any REA or comply with the terms and conditions of any REA as hereinabove provided during the Term of this Lease.

4. Use of Leased Premises; Quiet Enjoyment.

a. Tenant may use the Leased Premises for a world headquarters (office) and warehouse use (the "USE"), or any lawful use that does not violate the terms of any REA. In no event shall the Leased Premises be used for any purpose that would violate any Permitted Encumbrance or any covenants, restrictions, or agreements hereafter created by or consented to by Tenant applicable to the Leased Premises. Tenant agrees that with respect to the Permitted Encumbrances and any covenants, restrictions, or agreements hereafter created by or consented to by Tenant, Tenant shall observe, perform and comply with and carry out the provisions thereof required therein to be observed and performed by Landlord.

b. Subject to Tenant's rights under Paragraph 18 hereof, Tenant shall not permit any unlawful occupation, business, or trade to be conducted on the Leased Premises or any use to be made thereof contrary to applicable Legal Requirements or Insurance Requirements. Subject to Tenant's rights under Paragraph 18, Tenant shall not use, occupy, or permit any of the Leased Premises to be used or occupied, nor do or permit anything to be done in or on any of the Leased Premises, in a manner which would (i) make void or voidable any insurance which Tenant is required hereunder to maintain then in force with respect to any of the Leased Premises, (ii) affect the ability of Tenant to obtain any insurance which Tenant is required to furnish hereunder, or (iii) cause any injury or damage to any of the Improvements unless pursuant to Alterations permitted under Paragraph 12 hereof.

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

5. Term.

a. Subject to the provisions hereof Tenant shall have and hold the Leased Premises for an initial term commencing on October 18, 2001 (the "COMMENCEMENT DATE"), and ending October 31, 2021 (the "EXPIRATION DATE") (such initial term, together with any Renewal Term, hereinafter defined, which comes into effect as hereinafter provided, is herein called the "TERM").

b. Provided this Lease shall not have been terminated pursuant to the provisions of Paragraphs 13(b) or 19, Tenant shall have the option to renew this Lease for four (4) consecutive five (5) year periods (collectively, the "RENEWAL TERMS" and individually, a "RENEWAL TERM"). Tenant shall give the Landlord written notice ("RENEWAL TERM NOTICE") of

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its intent to renew the Lease at least one (1) year prior to the Expiration Date or the expiration date of the first Renewal Term, as applicable. Each Renewal Term shall be subject to all of the provisions of this Lease, and all such provisions shall continue in full force and effect, except that the Basic Rent for each Renewal Term shall be the amounts determined in accordance with the schedule set forth in Exhibit B attached hereto and made a part hereof. If Tenant shall fail to timely give a Renewal Term Notice, then all options with regard to subsequent Renewal Terms shall expire and be null and void, but only after Landlord delivers to Tenant a written notice of failure to deliver the Renewal Term Notice, and ten (10) days from the date of the written notice in which Tenant may cure the failure. Notwithstanding the foregoing, if Tenant has failed to deliver a Renewal Term Notice, and Landlord fails to send Tenant a notice of its failure to deliver a Renewal Term Notice, all options with regard to subsequent Renewal Terms shall expire and be null and void, without any further action required of Landlord, on the date that is eleven (11) months prior to the Expiration Date, or the expiration date of the applicable Renewal Term.

6. Rent.

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

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

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

c. If any installment of Basic Rent is not paid within ten (10) days after written notice is given by Landlord or Lender (or Lender's servicer or other designee of Lender) to Tenant that the same is overdue, Tenant shall pay to Landlord or Lender, as the case may be, on demand, as Additional Rent, a late charge equal to five percent (5%) (the "LATE CHARGE") on such overdue installment of Basic Rent, but in no event more than the maximum amount allowed by law.

d. Landlord and Tenant agree that this Lease is a true lease and does not represent a financing arrangement. Each party shall reflect the transactions represented by this

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Lease in all applicable books, records, and reports (including, without limitation, income tax filings) in a manner consistent with "true lease" treatment rather than "financing" treatment.

7. Net Lease; Non-Terminability.

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

b. Except as otherwise expressly provided in this Lease, this Lease shall not terminate and Tenant shall not have any right to terminate this Lease during the Term. Except as otherwise expressly provided in this Lease, Tenant shall not be entitled to any setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction, or defense of or to Basic Rent, Additional Rent, or any other sums payable under this Lease; and except as otherwise expressly provided in this Lease, and the obligations of Tenant under this Lease shall not be affected by any interference with Tenant's use of any of the Leased Premises for any reason, including but not limited to the following: (i) any damage to or destruction of any of the Leased Premises by any cause whatsoever, (ii) any Condemnation, (iii) the prohibition, limitation, or restriction of Tenant's use of any of the Leased Premises, (iv) any eviction by paramount title or otherwise, (v) Tenant's acquisition of ownership of any of the Leased Premises other than pursuant to an express provision of this Lease, (vi) any default on the part of Landlord under this Lease or under any other agreement, (vii) any latent or other defect in, or any theft or loss of any of the Leased Premises, (viii) the breach of any warranty of any seller or manufacturer of any of the Equipment, (ix) any violation of Paragraph 4(c) by Landlord, or (x) any other cause, whether similar or dissimilar to the foregoing, any present or future Law to the contrary notwithstanding. It is the intention of the parties hereto that the obligations of Tenant under this Lease shall be separate and independent covenants and agreements, and that Basic Rent, Additional Rent, and all other sums payable by Tenant hereunder shall continue to be payable in all events (or, in lieu thereof, Tenant shall pay amounts equal thereto), and that the obligations of Tenant under this Lease shall continue unaffected, unless this Lease shall have been terminated pursuant to an express provision of this Lease.

c. Tenant agrees that it shall remain obligated under this

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

d. This Lease is the absolute and unconditional obligation of Tenant. Tenant waives all rights which are not expressly stated in this Lease but which may now or hereafter otherwise be conferred by Law to the extent permitted by applicable law (i) to quit, terminate or

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surrender this Lease or any of the Leased Premises, (ii) to any setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense of or to Basic Rent, Additional Rent or any other sums payable under this Lease, except as otherwise expressly provided in this Lease, and (iii) for any statutory lien or offset right against Landlord or its property.

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

a. i) Subject to the provisions of Paragraph 18 hereof relating to contests, Tenant shall, before interest or penalties are due thereon, pay and discharge (all of the following being herein collectively called the "IMPOSITIONS"): all taxes of every kind and nature (including real, ad valorem, personal property) on or with respect to the Leased Premises; all charges and/or taxes for any easement or agreement maintained for the benefit of the Leased Premises; all general and special assessments, levies, permits, inspection and license fees on or with respect to the Leased Premises; all water and sewer rents and other utility charges on or with respect to the Leased Premises; and all other public charges and/or taxes whether of a like or different nature, even if unforeseen or extraordinary, imposed or assessed upon or with respect to the Leased Premises, prior to or during the Term, against Landlord, Tenant, or any of the Leased Premises as a result of or arising in respect of the ownership, occupancy, leasing, use, maintenance, operation, management, repair, or possession thereof, or any activity conducted on the Leased Premises, or the Basic Rent or Additional Rent, including without limitation, any gross income tax, sales tax, occupancy tax or excise tax levied by any governmental body on or with respect to such Basic Rent or Additional Rent. If received by Landlord, Landlord shall promptly deliver to Tenant any bill or invoice with respect to any Imposition.

ii) Nothing herein shall obligate Tenant to pay, and the term "IMPOSITIONS" shall exclude, federal, state or local (A) transfer taxes as the result of a conveyance by (or suffered by) Landlord, (B) franchise, capital stock or similar taxes if any, of Landlord, (C) income, excess profits or other taxes, if any, of Landlord, determined on the basis of or measured by its net income, or (D) any estate, inheritance, succession, gift, capital levy or similar taxes, unless the taxes referred to in clauses (B) and (C) above are in lieu of or a substitute for any other tax or assessment upon or with respect to any of the Leased Premises which, if such other tax or assessment were in effect at the commencement of the Term, would be payable by Tenant. In the event that any assessment against any of the Leased Premises may be paid in installments, Tenant shall have the option to pay such assessment in installments; and in such event, Tenant shall be liable only for those installments which become due and payable during the Term. Tenant shall prepare and file all tax reports required by governmental authorities which relate to the Impositions. Tenant shall deliver to Landlord and to Lender, within twenty (20) days after Landlord's written request therefor, copies of all settlements and notices pertaining to the Impositions which may be issued by any governmental authority and receipts for payments of all Impositions made during each calendar year of the Term.

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

9. Liens; Recording and Title.

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

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

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

10. Indemnification.

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

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WILL COOPERATE AND ASSIST IN THE DEFENSE OF SUCH ACTION OR PROCEEDING IF REASONABLY REQUESTED SO TO DO BY TENANT.

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

11. Maintenance and Repairs.

a. Except for any Alterations that Tenant is permitted to make pursuant to this Lease, Tenant shall at all times, including any Requisition period, put, keep, and maintain the Leased Premises (including, without limitation, the roof, landscaping, walls, footings, foundations, and structural

components of the Leased Premises) and the Equipment in the same condition and order of repair as exists as of the date of this Lease, except for ordinary wear and tear, and shall promptly make all repairs and replacements of every kind and nature, whether foreseen or unforeseen, which may be required to be made upon or in connection with the Leased Premises in order to keep and maintain the Leased Premises in the order and condition required by this Paragraph 11 (a). Tenant shall do or cause others to do all shoring of the Leased Premises or of foundations and walls of the Improvements and every other act necessary or appropriate for preservation and safety thereof, by reason of or in connection with any excavation or other building operation upon any of the Leased Premises, whether or not Landlord shall, by reason of any Legal Requirements or Insurance Requirements, be required to take such action or be liable for failure to do so. Landlord shall not be required to make any repair, whether foreseen or unforeseen, or to maintain any of the Leased Premises or Adjoining Property in any way, and Tenant hereby expressly waives the right to make repairs at the expense of the Landlord, which right may be provided for in any Law now or hereafter in effect. Nothing in the preceding sentence shall be deemed to preclude Tenant from being entitled to insurance proceeds or condemnation awards for Restoration pursuant to Paragraphs 13(c) and 14(g) of this Lease. Tenant shall, in all events, make all repairs for which it is responsible hereunder promptly, and all repairs shall be in a good, proper and workmanlike manner.

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

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

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

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

e. Landlord shall have no obligations for repairs, replacements, or maintenance of the Leased Premises.

12. Alterations.

a. Tenant shall not make Alterations which would (after the completion thereof) impair the structural integrity of the Leased Premises, without Landlord's written consent. Tenant may make any other Alterations without the prior written consent of the Landlord provided such Alterations comply with all of the provisions of the following paragraph.

b. In the event that Landlord gives its prior written consent to any Alterations, or if such consent is not required, Tenant agrees that in connection with any Alteration: (i) the fair market value of the Leased Premises shall not be lessened in any material respect after the completion of any such Alteration, or its structural integrity impaired; (ii) the Alteration and any Alteration theretofore made or thereafter to be made shall not in the aggregate reduce the gross floor area of the Improvements; (iii) all such Alterations shall be performed in a good and workmanlike manner, and shall be expeditiously completed in compliance with all Legal Requirements; (iv) all work done in connection with any such Alteration shall comply with all Insurance Requirements; (v) Tenant shall promptly pay all costs and expenses of any such Alteration, and shall (subject to the provisions of Paragraph 18 hereof) discharge all liens filed against any of the Leased Premises arising out of the same; (vi) Tenant shall procure and pay for all permits and licenses required in connection with any such Alteration; (vii) all such Alterations shall be the property of Landlord and shall be subject to this Lease; and (viii) all Alterations shall be made (in the case of any Alteration the estimated cost of which in any one instance exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00)) under the supervision of an architect or engineer and, in accordance with plans and specifications which shall be submitted to Landlord (for informational purposes only) prior to the commencement of the Alterations.

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13. Condemnation.

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

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

(B) In the event that during the Initial Term or during the first twenty-four (24) months of the first Renewal Term Tenant shall serve a Tenant's Termination Notice upon Landlord, Tenant shall, as part of such Tenant's Termination Notice offer (which offer may be rejected by Landlord only with Lender's consent as set forth below in Paragraph 13(b)(i)(E) if the Leased Premises are then subject to a Mortgage) to purchase the Leased Premises and the award (or if no part of the Leased Premises shall remain, the entire award) for the

applicable price (the "PURCHASE PRICE") computed in accordance with the schedule annexed hereto and marked Exhibit C plus all other amounts which may have accrued and be owing to Lender or Landlord under this Lease (the "ADDITIONS TO PURCHASE PRICE").

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

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

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

(ii) In the event that Landlord and Lender shall accept or be deemed to have accepted Tenant's offer to purchase, title shall close and the Purchase Price and Additions to Purchase Price shall be paid as hereinafter provided and in such event Tenant shall be entitled to and shall receive any and all awards with respect to the Leased Premises then or thereafter made in the Condemnation proceeding and Landlord shall assign (or in case of any award previously made, deliver to Tenant on the Closing Date) such award as may be made with respect to the Leased Premises. In the event Landlord and Lender shall accept Tenant's offer to purchase with respect to the Leased Premises, or be deemed to have accepted such Tenant's offer, title shall close thirty (30) days after the Termination Date hereinbefore defined (the "CLOSING DATE"), at noon at the local office of Landlord's counsel, or at such other time and place as the parties hereto may agree upon, this Lease shall be automatically extended to and including the Closing Date (or, if applicable, the extended Closing Date hereinafter described) and Tenant shall pay the Purchase Price and Additions to Purchase Price by transferring immediately available funds to such account or accounts and in such bank or banks as Lender or Landlord, in that order, shall designate, upon delivery to Tenant of a special warranty deed (or local equivalent) conveying Leased Premises and all other required documents including an assignment of any award in connection with the taking of the Leased Premises. The special warranty deed (or local equivalent) shall convey title, free from encumbrances other than (A) Permitted Encumbrances, (B) liens or encumbrances created or suffered by Tenant or arising by reason of the failure of Tenant to observe or perform any of the terms, covenants or agreements herein provided to be observed and performed by Tenant, (C) any installments of Impositions then affecting the Leased Premises, and (D) this Lease. The Purchase Price and Additions to Purchase Price payable as hereinabove provided shall be charged or credited, as the case may be, on the Closing Date, to reflect adjustments of Basic Rent paid or payable to and including the Closing Date, apportioned as of the Closing Date. Tenant shall pay all conveyance, transfer, sales and like taxes

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required in connection with the purchase, regardless of who is required to pay such taxes under State or local law or custom (and Tenant shall also pay to Landlord any amount necessary to yield to Landlord a net amount equal to the entire Purchase Price and Additions to Purchase Price if as a matter of the Law of the State or locality such tax cannot be paid directly by Tenant).

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

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

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

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

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

14. Insurance.

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

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

exclusions and deductible amounts.

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

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

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

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

vi) Business interruption insurance in an amount equal to at least one (1) year's Basic Rent.

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

b. The insurance required by Paragraph 14(a) shall be written by companies having a claims paying ability rating by Standard & Poors of not less than A, and all such companies shall be authorized to do an insurance business in the State, or otherwise agreed to by Landlord and Lender. The insurance policies (i) shall be in amounts sufficient at all times to satisfy any coinsurance requirements thereof, and (ii) shall (except for the worker's compensation insurance referred to in Paragraph 14(a)(iii) hereof) name Landlord, and Tenant and any Lender as additional insured parties or loss payee (as appropriate), as their respective interests may appear. If said insurance or any part thereof shall expire, be withdrawn, become void by breach of any condition thereof by Tenant or become void or unsafe by reason of the failure or impairment of the capital of any insurer, Tenant shall immediately obtain new or additional insurance reasonably satisfactory to Landlord and Lender.

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

d. Tenant shall pay as they become due all premiums for the insurance required by this Paragraph 14, shall renew or replace each policy, and shall deliver to Landlord, and Lender, a certificate or other evidence (reasonably satisfactory to Lender and Landlord) of the existing policy and such renewal or replacement policy at least thirty (30) days prior to the Expiration Date (as hereinafter defined) of each policy. Each such policy shall provide that it shall not expire until the Landlord and the Lender shall receive a notice from the insurer to the effect that a policy will expire on a date (the "EXPIRATION DATE") which shall be thirty (30) days following the date of the

receipt by Landlord and Lender of such notice. In the event of Tenant's failure to comply with any of the foregoing requirements of this Paragraph 14 within five (5) business days of the giving of written notice by Landlord to Tenant, Landlord shall be entitled to procure such insurance. Any sums expended by Landlord in procuring such insurance shall be Additional Rent and shall be repaid by Tenant, together with interest thereon at the Default Rate, from the time of payment by Landlord until fully paid by Tenant immediately upon written demand therefor by Landlord.

e. Anything in this Paragraph 14 to the contrary notwithstanding, any insurance which Tenant is required to obtain pursuant to Paragraph 14(a) may be carried under a "blanket" policy or policies covering other properties or liabilities of Tenant, provided that such

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"blanket" policy or policies otherwise comply with the provisions of this Paragraph 14. In the event any such insurance is carried under a blanket policy, Tenant shall deliver to Landlord and Lender evidence of the issuance and effectiveness of the policy, the amount and character of the coverage with respect to the Leased Premises and the presence in the policy of provisions of the character required in the above sections of this Paragraph 14.

f. In the event of any casualty loss exceeding \$100,000.00, Tenant shall give Landlord immediate notice thereof. Tenant shall adjust, collect and compromise any and all claims, with the consent of Lender and Landlord, not to be unreasonably withheld or delayed, and Landlord and Lender shall have the right to join with Tenant therein. If the estimated cost of Restoration or repair shall be One Hundred Thousand Dollars (\$100,000.00) or less, all proceeds of any insurance required under clauses (i), (iv), and (v) (and (vi) and (vii) if requested by Lender) of Paragraph 14(a) hereof shall be payable to Tenant, provided that Tenant (or the guarantor of the Tenant's obligations under this Lease) at such time shall have a tangible net worth of not less than One Hundred Million Dollars (\$100,000,000.00) as determined in accordance with generally accepted accounting principles, consistently applied, and in all other events to a Trustee which shall be a federally insured bank or other financial institution, selected by Landlord and Tenant and reasonably satisfactory to Lender (the "Trustee"). If the Leased Premises shall be covered by a Mortgage, Lender, if it so desires, shall be the Trustee. Each insurer is hereby authorized and directed to make payment under said policies directly to such Trustee instead of to Landlord and Tenant jointly; and Tenant and Landlord each hereby appoints such Trustee as its attorney-in-fact to endorse any draft therefor for the purposes set forth in this Lease after approval by Tenant of such Trustee, if Trustee is other than Lender. Except as stated in Paragraph 14(g) below, in the event of any casualty (whether or not insured against) resulting in damage to the Leased Premises or any part thereof, the Term shall nevertheless continue and there shall be no abatement or reduction of Basic Rent, Additional Rent or any other sums payable by Tenant hereunder. The Net Proceeds of such insurance payment shall be retained by the Trustee and, promptly after such casualty, Tenant, as required in Paragraphs 11 (a) and 12, shall commence and diligently continue to perform the Restoration to the Leased Premises. Upon payment to the Trustee of such Net Proceeds, the Trustee shall, to the extent available, make the Net Proceeds available to Tenant for Restoration, in accordance with the provisions of Paragraph 15. Tenant shall, whether or not the Net Proceeds are sufficient for the purpose, promptly repair or replace the Improvements and Equipment in accordance with the provisions of Paragraph 11 (a) and the Net Proceeds of such loss shall thereupon be payable to Tenant, subject to the provisions of Paragraph 15 hereof. In the event that any damage or destruction shall occur at such time as Tenant shall not have maintained third-party insurance in accordance with Paragraph 14(a)(i), (iv), (v), (vi) or (vii), Tenant shall pay to the Trustee the amount of the proceeds that would have been payable had such insurance program been in effect (the "TENANT INSURANCE PAYMENT").

g. Notwithstanding anything to the contrary contained herein, if all or substantially all of the Leased Premises are damaged or destroyed by fire or other casualty which, in the Tenant's good faith and reasonable judgment renders the Leased Premises unsuitable for Restoration to allow continued use and occupancy by the Tenant, then Tenant may elect to terminate the Lease, but only if such election is made within ninety (90) days of the casualty. If Tenant timely elects to terminate the Lease, then (i) if during the initial term, the

Tenant shall make a rejectable offer to purchase the Leased Premises following the same procedures outlined in Paragraph 13(b) of this Lease, and (ii) if during any Renewal Term, the Lease shall terminate, and Tenant shall assign all insurance proceeds to the Landlord.

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

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

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

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

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

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

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

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

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

16. Subordination to Financing.

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

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

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

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

d. Each of Tenant, any owner and Lender, however, upon demand of the other, hereby agrees to execute, from time to time, instruments in confirmation of the foregoing provisions of Paragraphs 16(a) and 16(c), reasonably satisfactory to the requesting party acknowledging such subordination, non-disturbance and attornment as are provided in such subsections and setting forth the terms and conditions of its tenancy.

e. Each of Tenant, Landlord and Lender agrees that, if requested by any of the others, each shall, without charge, enter into a Subordination, Non-Disturbance and Attornment Agreement reasonably requested by Lender, provided such agreement contains provisions relating to non-disturbance in accordance with the provisions of subparagraph (a), and Tenant hereby agrees for the benefit of Lender that Tenant will not, (i) without in each case the prior written consent of Lender, which shall not be unreasonably withheld, conditioned or delayed, amend or modify the Lease (provided, however, Lender, in Lender's sole discretion may withhold or condition its consent to any amendment or modification which would or could (A) alter in any way the amount or time for payment of any Basic Rent, Additional Rent or other sum payable hereunder, (B) alter in any way the absolute and unconditional nature of Tenant's obligations hereunder or materially diminish any such obligations, (C) result in any termination hereof prior to the end of the initial term, or (D) otherwise, in Lender's reasonable judgment, affect the rights or obligations of Landlord or Tenant hereunder), or enter into any agreement with Landlord so to do, (ii) without the prior written consent of Lender which may be withheld in Lender's

sole discretion, cancel or surrender or seek to cancel or surrender this Lease or the Term hereof, or enter into any agreement with Landlord to do so (the parties agreeing that the foregoing shall not be construed to affect the rights or obligations of Tenant, Landlord or Lender with respect to any termination permitted under the express terms hereof in connection with an offer to purchase the Leased Premises following certain events of condemnation as provided in Section 13 hereof), or (iii) pay any installment of Basic Rent more than one (1) month in advance of the due date thereof or otherwise than in the manner provided for in this Lease.

17. Assignment or Subleasing.

a. Notwithstanding anything contained in this Lease to the contrary, Tenant may not assign its interest in this Lease without the prior written consent of Landlord, which may be withheld in the sole and absolute discretion of Landlord, unless such assignment is to a successor-by-merger or related or affiliated entity. Tenant may not sublease the Demised Premises, in whole or in part, without the prior written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion.

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

c. Upon the occurrence of an Event of Default under this Lease, Landlord shall have the right to collect and enjoy all rents and other sums of money payable under any sublease of any of the Leased Premises, and Tenant hereby irrevocably and unconditionally assigns such rents and money to Landlord, which assignment may be exercised upon and after (but not before) the occurrence of an Event of Default.

18. Permitted Contests.

a. After prior written notice to Landlord, Tenant shall not be required to (i) pay any Imposition, (ii) comply with any Legal Requirement, (iii) discharge or remove any lien referred to in Paragraphs 9 or 12, or (iv) take any action with respect to any violation referred to in Paragraph 11 (b), so long as Tenant shall contest, in good faith and at its expense, the existence, the amount or the validity thereof, the amount of the damages caused thereby, or the extent of its or Landlord's liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon, the Imposition or lien so contested, (B) the sale, forfeiture or loss of any of the Leased Premises, any Basic Rent or any Additional Rent to satisfy the same or to pay any damages caused by the violation of any such Legal Requirement or by any such violation, (C) any interference with the use or occupancy of any of the Leased Premises, (D) any interference with the payment of any Basic Rent or any Additional Rent, and (E) the cancellation of any fire or other insurance policy.

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

of its interest the Leased Premises.

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

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19. Conditional Limitations; Default Provisions.

a. The occurrence of any one or more of the following events (any such event being specified herein as a "failure" or "default") shall constitute an Event of Default under this Lease: (i) a failure by Tenant to make (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal which had or might have the effect of preventing Tenant from complying with the provisions of this Lease): (x) any payment of Basic Rent which continues unremedied for a period of five (5) business days after written notice in accordance with Paragraph 21 below ("NONPAYMENT NOTICE") thereof given to Tenant by Landlord or Lender or Lender's designee, or (y) any payment of Additional Rent or other sum herein required to be paid by Tenant which continues unremedied for a period of ten (10) business days after a Nonpayment Notice is given to Tenant by Landlord or Lender or Lender's designee; (ii) failure by Tenant to perform and observe, or a violation or breach of, any other provision in this Lease and such default shall continue for a period of thirty (30) business days after written notice thereof is given by Landlord or Lender or Lender's designee to Tenant or if such default is of such a nature that it cannot reasonably be cured within such period of thirty (30) business days, such period shall be extended for such longer time as is reasonably necessary provided that Tenant has commenced to cure such default within said period of thirty (30) business days and is actively, diligently and in good faith proceeding with continuity to remedy such default; (iii) Tenant or any guarantor of Tenant's obligations hereunder shall (A) voluntarily be adjudicated a bankrupt or insolvent, (B) or voluntarily consent to the appointment of a receiver or trustee for itself or for any of the Leased Premises, (C) voluntarily file a petition seeking relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, or (D) voluntarily file a general assignment for the benefit of creditors; (iv) a court shall enter an order, judgment or decree appointing, with the voluntary consent of Tenant or any guarantor of Tenant's obligations hereunder, a receiver or trustee for Tenant or any guarantor of Tenant's obligations hereunder or for the Leased Premises or approving a petition filed against Tenant or any guarantor of Tenant's obligations hereunder which seeks relief under the bankruptcy or other similar laws of the United States or any State, and such order, judgment or decree shall remain in force, undischarged or unstayed, ninety (90) business days after it is entered; (v) Tenant or any guarantor of Tenant's obligations hereunder shall in any insolvency proceedings be liquidated or dissolved or shall voluntarily commence proceedings towards its liquidation or dissolution; or (vi) the estate or interest of Tenant in the Leased Premises shall be levied upon or attached in any proceeding and such estate or interest is about to be sold or transferred or such process shall not be vacated or discharged within ninety (90) business days after such levy or attachment. Notwithstanding anything to the contrary contained in this Section 19(a), it shall be an immediate Event of Default without demand, notice, or opportunity to cure, if Tenant fails to maintain any of the Insurance required by Section 14 of this Lease.

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

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

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

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

iv) If Tenant shall fail to make payment of any installment of Basic Rent or any Additional Rent after the date when each such payment is due (after expiration of any applicable notice and cure periods), Tenant shall pay to Landlord, a sum equal to two (2%) percent per annum above the then current Prime Rate, as hereinafter defined, of the amount unpaid (the "DEFAULT RATE") computed from the date such payment of Basic Rent or Additional Rent was due to and including the date of payment. The term "PRIME RATE" shall mean the prime rate of interest published in the Wall Street Journal or its successor, from time to time.

v) Landlord may exercise any other right or remedy now or hereafter existing by law or in equity, other than the right to accelerate rent.

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

20. Additional Rights of Landlord and Tenant.

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

b. Tenant hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, any right and privilege which it or any of them may have under any present or future law to redeem any of the Leased Premises or to have a

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continuance of this Lease after termination of this Lease or of Tenant's right of occupancy or possession pursuant to any court order or any provision hereof.

c. Landlord hereby waives any right to distrain or levy upon Trade Fixtures or any property of Tenant and any Landlord's lien or similar lien upon Trade Fixtures and any other property of Tenant regardless of whether such lien is created or otherwise. Landlord agrees at the request of Tenant, to execute a waiver of any Landlord's or similar lien for the benefit of any present or future holder of a security interest in or lessor of any of Trade Fixtures or any other personal property of Tenant.

d. Landlord acknowledges and agrees in the future to acknowledge (in a written form reasonably satisfactory to Tenant) to such persons and entities at such times and for such purposes as Tenant may reasonably request that the Trade Fixtures are Tenant's property and not part of the Improvements (regardless of whether or to what extent such Trade Fixtures are affixed to the Improvements) or otherwise subject to the terms of this Lease.

e. Each of Tenant and Landlord (herein called "PAYING PARTY") agrees to pay to the other party (herein called "DEMANDING PARTY") any and all reasonable costs and expenses incurred by the Demanding Party in connection with any litigation or other action instituted by the Demanding Party to enforce the obligations of the Paying Party under this Lease, to the extent that the Demanding Party has prevailed in any such litigation or other action. Any amount payable by Tenant to Landlord pursuant to this Paragraph 20(e) shall be due and payable by Tenant to Landlord as Additional Rent. No sum payable by Landlord to Tenant under this subparagraph will be payable or recoverable from any sums

pledged or assigned (or intended to have been pledged or assigned) by Landlord to Lender, Tenant's right to recover such sums from Landlord being subordinate to the rights of Lender, such sums only being recoverable after payment to Lender in full of the Loan as constituted on the date hereof.

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

To the Addresses stated below:

If to Landlord:

General Electric Capital Business Asset Funding Corporation
10900 NE 4th Street, Suite 500
Bellevue, Washington 98004
Attn: Patrick J. Pearson

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With a copy to:

Dechert Price & Rhoads
Ten Post Office Square South
Boston, Massachusetts 02109
Attn: Lewis A. Burleigh

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If to Tenant:

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

With a copy to:

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

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

22. Estoppel Certificates. Landlord and Tenant shall at any time and from time to time, upon not less than twenty (20) days' prior written request by the other, execute, acknowledge and deliver to the other a statement in writing, certifying (i) that this Lease is unmodified and in full effect (or, if there have been modifications, that this Lease is in full effect as modified, setting forth such modifications), (ii) the dates to which Basic Rent, payable hereunder has been paid, (iii) that to the knowledge of the signer of such certificate no default or Event of Default by either Landlord or Tenant has occurred and is continuing hereunder, (iv) the remaining Term hereof, (v) with respect to a

certificate signed on behalf of Tenant, that to the knowledge of the signer of such certificate, there are no proceedings pending or threatened against Tenant before or by any court or administrative agency which if adversely decided would materially and adversely affect the financial condition and operations of Tenant or if any such proceedings are pending or threatened to said signer's knowledge, specifying and describing the same, and (vi) such other matters as may reasonably be requested by the party requesting the certificate. It is intended that any such statements may be relied upon by Landlord, Tenant, Lender, the recipient of such statements or their assignees or by any prospective purchaser, assignee or subtenant of the Leased Premises.

23. Surrender and Holding Over.

a. Upon the expiration or earlier termination of this Lease, Tenant shall peaceably leave and surrender the Leased Premises (except as to any portion thereof with respect to which this Lease has previously terminated) to Landlord. Tenant shall remove from the Leased Premises on or prior to such expiration or earlier termination the Trade Fixtures and

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personal property which is owned by Tenant or third parties other than Landlord, and Tenant at its expense shall, on or prior to such expiration or earlier Termination, repair any damage caused by such removal. Trade Fixtures and personal property not so removed at the end of the Term or within thirty (30) days after the earlier termination of the Term for any reason whatsoever shall become the property of Landlord, and Landlord may thereafter cause such property to be removed from the Leased Premises. The cost of removing and disposing of such property and repairing any damage to any of the Leased Premises caused by such removal shall be borne by Tenant. Landlord shall not in any manner or to any extent be obligated to reimburse Tenant for any property which becomes the property of Landlord as a result of such expiration or earlier termination.

b. Any holding over by Tenant of the Leased Premises after the expiration or earlier termination of the Term of this Lease or any extensions thereof, with the consent of Landlord, shall operate and be construed as tenancy from month to month only, at one hundred twenty-five percent (125%) of the Basic Rent reserved herein and upon the same terms and conditions as contained in this Lease. Notwithstanding the foregoing, any holding over without Landlord's consent shall entitle Landlord, in addition to collecting Basic Rent at a rate of one hundred twenty-five percent (125 %) thereof, to exercise all rights and remedies provided by law or in equity, including the remedies of Paragraph 19(b).

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

25. Definition of Landlord.

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

b. The term "LANDLORD" as used in this Lease so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners of the Leased Premises or holder of the Mortgage in possession at the time in question of the Leased Premises and in the event of any transfer or transfers of the title of the Leased Premises, the Landlord herein named (and in case of any subsequent transfers or conveyances,

the then grantor) shall be automatically freed and relieved from and after the date

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of such transfer and conveyance of all personal liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed.

26. Hazardous Substances.

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

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

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whether or not arising out of or in any manner connected with Tenant's occupancy of the Leased Premises during the initial Term or Renewal Term.

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

flammable materials on the Leased Premises in violation of the Act or any other federal, state or local laws, rules or regulations governing Hazardous Materials.

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

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

29. Separability.

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

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30. Miscellaneous.

a. The paragraph headings in this Lease are used only for convenience in finding the subject matters and are not part of this Lease or to be used in determining the intent of the parties or otherwise interpreting this Lease.

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

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

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

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

the benefit of and bind Landlord, its successors and assigns.

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

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

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

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

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32. Financial Statements. Tenant shall provide to Landlord, on a quarterly and annual basis, the Financial Statements. Tenant shall deliver such Financial Statements as soon as is commercially reasonable following the end of each fiscal quarter and fiscal year.

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

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LANDLORD:

GENERAL ELECTRIC CAPITAL
BUSINESS ASSET FUNDING
CORPORATION,
a Delaware corporation

By: /s/ Linda K. Bracken

Name: Linda K. Bracken

Title: Vice President

TENANT:

DAVE & BUSTER'S, INC.,
a Missouri corporation

By: /s/ Chas Michel

Name: Chas Michel

Title: Chief Financial Officer

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

BEING Lot 3, in Block G/6509, of DAVE AND BUSTER'S HQ ADDITION, an Addition to City of Dallas, Dallas County, Texas, according to the Map thereof recorded in Volume 97207, Page 4416, of the Map Records of Dallas County, Texas, being more particularly described as follows:

BEING a tract of land situated in the JOHN L. HUNT SURVEY, ABSTRACT NO. 588, Dallas County, Texas and being a portion of City of Dallas Block G/6509 and being all of Lot 3, Block G/6509 of DAVE & BUSTER'S HQ. ADDITION, an addition to the City of Dallas according to the plat as recorded in Volume 97207, Page 4416 of the Deed Records of Dallas County, Texas (DRDCT) and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod set in the northerly right-of-way line of MANANA DRIVE (a 60' right-of-way) and the southwesterly corner of a tract of land described in a deed to The Moss Venturing, Inc., as recorded in Volume 2001068, Page 5185 (DRDCT), said iron rod also being located North 89 degrees 01 minute 36 seconds West along the northerly right-of-way line of said MANANA DRIVE, a distance of 134.01 feet from its intersection with the westerly right-of-way line of ELECTRONIC LANE (60' right-of-way);

THENCE along the northerly right-of-way line of said MANANA DRIVE, North 89 degrees 01 minute 36 seconds West, a distance of 475.00 feet to a 5/8 inch iron rod found for corner;

THENCE departing the northerly right-of-way line of said MANANA DRIVE, North 00 degrees 15 minutes 35 seconds East, a distance of 490.33 feet to a 5/8 inch iron rod set in the southerly line of a tract of land described in a deed to AAI INVESTMENTS, INC. as recorded in Volume 95249, Page 2972 (DRDCT);

THENCE South 89 degrees 19 minutes 29 seconds East, a distance of 478.39 feet to a 5/8 inch iron rod set in the southerly line of a tract of land described as Tract II in a deed to EBE REALTY, INC. as recorded in Volume 89245, Page 4411 (DRDCT), said iron rod also being the northwesterly corner of a tract of land described in a deed to RE-MMC, L.L.C. as recorded in Volume 98207, Page 4657 (DRDCT);

THENCE South 00 degrees 39 minutes 24 seconds West, a distance of 492.79 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 5.379 acres or 234,314 square feet of land more or less.

EXHIBIT B

Primary Initial Term: Twenty (20) years

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

Duration of each Renewal Term: Five (5) years

1. Basic Rent from the Commencement Date through the first anniversary of the Commencement Date shall be \$896,000 annually, payable in monthly installments of \$74,666.67 each.

2. Base Rent shall increase annually on each anniversary of the Commencement Date by 1.35%, through and including any Renewal Terms.

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EXHIBIT C

Casualty and Condemnation Purchase Price

\$7,790,000

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