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UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2005

OR

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

For the transition period from _____ to _____

Commission file number: 001-32320

BUILD-A-BEAR WORKSHOP, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**43-1883836**
(State or Other Jurisdiction of Incorporation or Organization)	*(I.R.S. Employer Identification No.)*
1954 Innerbelt Business Center Drive **St. Louis, Missouri** *(Address of Principal Executive Offices)*	**63114** *(Zip Code)*

(314) 423-8000
(Registrant's Telephone Number, Including Area Code)

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

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, par value $0.01 per share	New York Stock Exchange

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

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

o Yes ☑ No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

o Yes ☑ No

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

☑ Yes o No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer o Accelerated filer ☑ Non-accelerated filer o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

o Yes ☑ No

There is no non-voting common equity. The aggregate market value of the common stock held by nonaffiliates (based upon the closing price of $23.90 for the shares on the New York Stock Exchange on July 1, 2005) was approximately $342,905,000, as of July 2, 2005.

As of March 10, 2006, there were 20,178,988 issued and outstanding shares of the registrant's common stock.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement for its May 11, 2006 Annual Meeting are incorporated herein by reference.

BUILD-A-BEAR WORKSHOP, INC.
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FORWARD-LOOKING STATEMENTS

This annual report on Form 10-K contains certain statements that are, or may be considered to be, “forward-looking statements” for the purpose of federal securities laws, including, but not limited to, statements that reflect our current views with respect to future events and financial performance. We generally identify these statements by words or phrases such as “may,” “might,” “should,” “expect,” “plan,” “anticipate,” “believe,” “estimate,” “intend,” “predict,” “future,” “potential” or “continue,” the negative or any derivative of these terms and other comparable terminology. These forward-looking statements, which are subject to risks, uncertainties and assumptions about us, may include, among other things, projections or statements regarding:

- our future financial performance;
- our anticipated operating and growth strategies;
- our anticipated rate of store openings;
- our franchisees’ anticipated rate of international store openings;
- our anticipated store opening costs; and
- our future capital expenditures.

These statements are only predictions based on our current expectations and projections about future events. Because these forward-looking statements involve risks and uncertainties, there are important factors that could cause our actual results, level of activity, performance or achievements to differ materially from the results, level of activity, performance or achievements expressed or implied by these forward-looking statements, including those factors discussed under the caption entitled “Risk Factors” as well as other places in this annual report on Form 10-K.

We operate in a competitive and rapidly changing environment. New risk factors emerge from time to time and it is not possible for management to predict all the risk factors, nor can it assess the impact of all the risk factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Given these risks and uncertainties, you should not place undue reliance on forward-looking statements, which speak only as of the date of this annual report on Form 10-K, as a prediction of actual results.

You should read this annual report on Form 10-K completely and with the understanding that our actual results may be materially different from what we expect. Except as required by law, we undertake no duty to update these forward-looking statements, even though our situation may change in the future. We qualify all of our forward-looking statements by these cautionary statements.

PART I

ITEM 1. BUSINESS

Overview

Build-A-Bear Workshop, Inc. is the leading, and only national, company providing a "make your own stuffed animal" interactive retail-entertainment experience. As of March 10, 2006, we operated 200 Build-A-Bear Workshop® stores in 43 states and Canada and had 30 franchised stores in international locations. Our concept is based on our guests making, personalizing and customizing their stuffed animals, and capitalizes on what we believe is the relatively untapped demand for experience-based shopping as well as the widespread appeal of stuffed animals.

We offer an extensive and coordinated selection of merchandise, including over 30 different styles of animals to be stuffed and a wide variety of clothing, shoes and accessories for the stuffed animals. Our concept appeals to a broad range of age groups and demographics, including children, teens, parents and grandparents. We believe that our stores, which are primarily located in malls, are destination locations and draw guests from a large geographic reach. Our stores average approximately 3,000 square feet in size and have a highly visual and colorful appearance, including custom-designed fixtures featuring teddy bears and other themes relating to the Build-A-Bear Workshop experience.

We also market our products and build our brand through a nationwide multi-media marketing program that targets our core demographic guests, principally parents and children. The program incorporates consistent messaging across a variety of media, and is designed to increase our brand awareness and store traffic and attract more first-time and repeat guests.

Since opening our first store in St. Louis, Missouri in October 1997, we have sold over 36 million stuffed animals. We have grown our store base from 108 stores at the end of fiscal 2002 to 200 as of March 10, 2006 and increased our revenues from $213.7 million in fiscal 2003 to $361.8 million in fiscal 2005, for a compound annual revenue growth rate of 30.1%, and increased net income from $7.6 million in fiscal 2003 to $27.3 million in fiscal 2005, for a compound annual net income growth rate of 89.5%.

Description of Operations

Guests who visit Build-A-Bear Workshop enter a teddy-bear-themed environment consisting of eight stuffed animal-making stations: Choose Me, Hear Me, Stuff Me, Stitch Me, Fluff Me, Dress Me, Name Me, and Take Me Home. To attract our target guests, we have designed our stores to provide a "theme park" destination in the mall that is open and inviting with an entryway that spans the majority of our storefront and highly visual and colorful teddy bear themes and displays. The duration of a guest's experience can vary greatly depending on his or her preferences. While most guests choose to participate in the animal-making stations described above, a process which we believe averages 45 minutes to complete, guests can also visit a Build-A-Bear Workshop store and purchase items such as clothing, accessories, our Bear Bucks gift certificates or pre-made animals in only a few minutes.

We offer an extensive and coordinated selection of merchandise including approximately 30 to 35 varieties of animals to be stuffed, as well as a wide variety of other clothing and accessory items for the animals. We enhance the authentic nature of a number of our products with strategic product licensing relationships with brands that are in demand with our guests such as officially sanctioned NFL, NBA and MLB™ team apparel, SKECHERS® shoes or Limited Too clothing. There are approximately 450 SKUs in our store at any one time so we intend for each item to be highly productive.

Given the high value proposition we believe we offer our guests, we historically have not had seasonal or advertised sales events or markdowns, but we selectively use coupons and frequent shopper discounts for our most loyal guests, as well as gift-with-purchase promotions.

Growth Strategy

Our growth strategy is to develop and expand the reach of the Build-A-Bear Workshop brand by investing in value-adding marketing programs as well as infrastructure and technology and to offer an authentic and unique merchandise assortment. We expect to grow our business by opening additional stores in the United States and Canada, adding additional international stores through existing and new franchise agreements and through the development of third party licensed products that promote Build-A-Bear Workshop as a lifestyle brand and build overall brand awareness.

We have increased our store locations throughout the United States and Canada from 108 at the end of fiscal 2002 to 200 as of March 10, 2006. We expect to open approximately 30 new stores in fiscal 2006 in new and existing markets in the United States and Canada. We believe there is a market potential for approximately 350 Build-A-Bear Workshop stores in the United States and Canada.

In addition, we also currently operate Build-A-Bear Workshop stores in three Major League Baseball® ballparks and we plan to open stores in two additional ballparks in fiscal 2006 as well as our first store located in a zoo.

We believe that there is continued opportunity to grow our Build-A-Bear Workshop concept and brand outside of the United States and Canada. Our franchisees have retail and/or real estate experience and are currently operating 30 Build-A-Bear Workshop stores in several foreign countries under master franchise agreements on a country-by-country basis. We expect our franchisees to open approximately 20 new stores in fiscal 2006 under existing and anticipated franchise agreements. We believe there is a market potential for approximately 350 franchised stores outside the United States and Canada. In addition, we have recently entered into definitive agreements to acquire Amsbra Limited, our franchisee in the United Kingdom, as well as The Bear Factory Limited, a stuffed animal retailer in the United Kingdom. These transactions, which are subject to regulatory approval in the United Kingdom, are expected to close late in the first quarter or early in the second quarter of fiscal 2006.

We believe there are also growth opportunities in other experiential retail entertainment concepts. We believe that consumer demand for additional experiential retail concepts is relatively untapped and that our expertise in product development and providing a consistent shopping experience can be applied to other experiential retail brands and concepts. We expect to be able to leverage our extensive guest database to market these new brands and concepts.

In fiscal 2003, we began testing in certain markets our initial brand expansion initiative, our proprietary Friends 2B Made® line of make-your-own dolls and related products. We believe this concept brings to dolls what Build-A-Bear Workshop has brought to teddy bears — an opportunity to participate in the creation and customization of the doll. The target customer for Friends 2B Made is a girl age five to twelve. We opened three additional Friends 2B Made locations in 2005 to bring the total number of Friends 2B Made locations to five as of March 10, 2006. All of these locations are in or adjacent to a Build-A-Bear Workshop store and are not considered a separate store. We expect to open five additional Friends 2B Made locations in fiscal 2006, some of which will be adjacent to Build-A-Bear Workshop stores. We continue to evaluate the seasonality of the doll business, adjust our merchandise assortments, and add additional product lines as we determine the long term potential of this concept.

In addition, we are consistently evaluating additional retail opportunities and expect to continue our expansion into other concepts and product lines in the future. For example, in 2006, the first Build-A-Dino™ store will open in partnership with T-Rex™ Café, our first store within a third-party restaurant concept.

Product Development

Through our in-house design and product development team, we have developed a coordinated, creative and broad merchandise assortment, including a variety of animals, clothing, shoes and accessories. We believe our merchandise is an integral part of our concept and that the proprietary design of many of the products we offer is a critical element of our success, while the authentic and fashionable nature of our products greatly enhances our brand's appeal to our guests. Our product development team regularly monitors current fashion and culture trends in order to create products that we believe are most appealing to our guests, often reflecting similar styling to the clothes our guests wear themselves. We test our products on an on-going basis to ensure guest demand supports order quantities. Through our focused vendor relationships, we are able to source our merchandise in a manner that is cost-effective, maximizes our speed to market and facilitates rapid reorder of our best-selling items.

The skins for our animals are produced from high quality man-made materials, and the stuffing is made of a high-grade polyester fiber. We believe all of our products meet Consumer Product Safety Commission requirements for toys and American Society for Testing and Materials specifications for toy safety in all material respects. We routinely have samples of all items sold in our stores tested at independent laboratories for compliance with these requirements. Packaging and labels are developed for each product to communicate age grading and any special warnings which may be recommended by the Consumer Product Safety Commission.

Marketing

We believe that the strength of the Build-A-Bear Workshop brand is a competitive advantage and an integral part of our strategy. Unlike other mall based retailers that frequently use markdowns or sale events to drive sales, at Build-A-Bear Workshop we use marketing to raise brand awareness and drive traffic to our stores. Our goal is to continue to build the awareness of our brand and the recognition of our name as a destination retailer that provides experience-based shopping across a broad range of age groups and demographics.

Since February 2004, we have utilized an integrated marketing program that utilizes national television advertising, direct mail and other components. Our advertising expenditures were $10.1 million (4.7% of total revenues) in fiscal 2003, $22.7 million (7.5% of total revenues) in fiscal 2004 and $27.2 million (7.5% of total revenues) in fiscal 2005, reflecting the rollout and continuation of our marketing initiatives.

We employ several different marketing programs to drive traffic to our stores and grow awareness of our brand. Because we have a relatively balanced quarterly business, we can benefit from advertising campaigns that run in all four quarters of the year. We use television and online advertising to communicate our interactive product and experience. In 2005, we tested radio advertising on Radio Disney and will expand those programs in 2006. We leverage our database of over 14 million unique households in our direct mail and e-mail programs. Our website, www.buildabear.com, offers e-commerce, information and entertaining games to over 1 million unique visitors per month. We also incorporate store events, tourism marketing, mobile marketing and public relations into our marketing plans. We integrate the timing and the messaging of the advertising and marketing programs across the various media to maximize our reach to both new and existing guests and drive traffic into our stores.

Licensing and Strategic Relationships

We have developed licensing and strategic relationships with some of the leading retail and cultural organizations in the United States and Canada. We believe that our guest base and our position in our industry category makes us an attractive partner and our customer research and insight allows us to focus on strategic relationships with other companies that we believe are appealing to our guests. We plan to continue to add strategic relationships on a selective basis with companies who share our vision for our brand and provide us with attractive brand-awareness, marketing and merchandising opportunities. These relationships for specific products are generally reflected in contractual arrangements for limited terms that are terminable by either party upon specified notice.

Product and Merchandise Licensing. We have key strategic relationships with select companies, including World Wildlife Fund, SKECHERS®, the NBA, the WNBA, MLB™, Limited Too, Disney, NFL and First Book and, in Canada, the NHL® and World Wildlife Fund Canada, in which we use their brands on our products sold in our stores. These strategic relationships allow both parties to generate awareness around their brands. We have relationships with groups that pursue socially responsible causes, as well as companies that have strong consumer brands, in order to respond to our guests' interests.

Promotional Arrangements. We have also developed promotional arrangements with selected organizations. Our arrangements with Major League Baseball® teams, including the Chicago Cubs™, St. Louis Cardinals™, New York Mets™ and San Francisco Giants™, have featured stuffed animal giveaways at each club's ballpark on a day in which our brand is highly promoted within the stadium. We also have arrangements featuring product sampling, cross promotions and shared media with companies such as Lego and Macy's as well as targeted promotions with key media brands like *Nickelodeon Magazine* and Radio Disney.

Third Party Licensing. We have entered into a series of licensing arrangements with leading manufacturers to develop a collection of lifestyle Build-A-Bear Workshop branded products including backpacks and luggage, greeting cards and calendars, scrapbook supplies, sleepwear, children's shoes, books, toys, bedding, fabric and bath accessories. We believe that each of these initiatives has the potential to enhance our brand, raise brand awareness, and drive increased revenues and profitability. We select companies for licensing relationships that we believe are leaders in their respective sectors and that understand and share our strategic vision for offering guests exciting and interactive merchandise. We have policies and practices in place intended to ensure that the products manufactured under the Build-A-Bear Workshop brand adhere to our quality, value and usability standards. We have entered into licensing arrangements for our branded products with leading manufacturers including American Greetings, Creative Designs International, Dream Apparel, Elan-Polo, HarperCollins, Houston Harvest, Pulaski Furniture and Springs Industries.

Industry and Guest Demographics

While Build-A-Bear Workshop offers consumers an interactive and personalized experience, our tangible product is stuffed animals, including our flagship product, the teddy bear, a widely adored stuffed animal for over 100 years. According to data published by the International Council of Toy Industries, worldwide sales of retail plush toys was approximately $4.4 billion and retail sales of dolls was approximately $6.6 billion in 2000, which combined represent about 20% of the $55 billion worldwide toy industry (excluding video games). In addition, a study conducted for the Toy Industry Association reported U.S. sales of retail plush toys was $1.3 billion and retail sales of dolls was $2.7 billion in 2005, for a combined total of over $4.0 billion. In 2005, Playthings Magazine ranked us as the 13th largest toy retailer in the United States for 2004 based on sales.

Our guests are very diverse, spanning broad age ranges and socio-economic categories. Major guest segments include families with children, primarily ages three to twelve, grandparents, aunts and uncles, teen girls who occasionally bring along their boyfriends and child-centric organizations looking for interactive entertainment options such as scouting organizations and schools. Based on information compiled from our guest database for 2005, the average age of the recipient of our stuffed animals at the time of purchase is ten years old and children aged one to fourteen are the recipients of approximately 80% of our stuffed animals.

According to the United States Census Bureau, in 2004 there were over 60 million children age 14 and under in the United States. While the size of this population group is projected to remain relatively stable over the next decade, the economic influence of this age group is expected to increase. Based on a recent third-party publication, we believe that children's spending has doubled every ten years for the past three decades, tripling in the 1990s. Direct spending by children aged four to twelve was estimated at $2.2 billion in 1968, $4.2 billion in 1984 and $17.1 billion in 1994 and 2002 estimates placed spending by this demographic at $40 billion. By 2006,

children are expected to directly spend more than $50 billion as well as influence hundreds of billions of dollars in additional family spending.

Employees and Training

We are committed to providing a great experience for our diverse team of associates as well as our guests. We have a distinctive culture that we believe encourages contribution and collaboration. We take great pride in our culture and feel it is critical in encouraging creativity, communication, and strong store performance. All store managers receive comprehensive training through our Bear University® program, which is designed to promote a friendly and personable environment in our stores and a consistent experience across our stores. We extensively train our associates on the bear-making process and the guest experience. In fiscal 2005, we hired less than 2% of applicants for store manager positions. We focus on employing and retaining people who are friendly and focused on guest service. Our above average employee retention rates, based on 2005 industry data, contribute to the consistency and quality of the guest experience. Our store teams are evaluated and compensated not only on sales results but also the results from our regular guest satisfaction surveys. Each store has a recognition fund so that exceptional guest service can be immediately recognized and rewarded. We are committed to providing compensation structures that recognize individual accomplishments as well as overall team success.

As of December 31, 2005, we employed approximately 850 full-time and 5,500 part-time employees. We divide our United States and Canadian store base into two geographic regions, which are supervised by our Chief Workshop Bear and two Regional Workshop Directors. Bearitory Leaders are responsible for each of our 21 bearitories consisting of between six and twelve stores. Each of our stores generally has a full-time Chief Workshop Manager and two full-time Assistant Workshop Managers in addition to hourly Bear Builder™ associates, most of whom work part-time. The number of part-time employees fluctuates depending on our seasonal needs. In addition to the approximately 6,100 employees at our store locations, we employ approximately 250 associates in general administrative functions at our World Bearquarters in St. Louis, Missouri. We are committed to innovation and invention and generally have confidentiality agreements with our employees and consultants. Store managers and Bearquarters associates pass specific profile assessments. None of our employees are represented by a labor union, and we believe our relationship with our employees is good.

International Franchises

In 2003, we began to expand the Build-A-Bear Workshop brand outside of the United States, opening our own stores in Canada and our first franchised location in the United Kingdom. As of March 10, 2006, there were 30 Build-A-Bear Workshop franchised stores located in the following countries:

United Kingdom	11
Japan	5
Australia	5
Denmark	4
Other	5

On March 3, 2006, we entered into definitive agreements to acquire Amsbra Limited (Amsbra), our franchisee in the United Kingdom, and The Bear Factory Limited, a stuffed animal retailer in the United Kingdom. Amsbra operates all of the franchised Build-A-Bear Workshop stores located in the United Kingdom. These transactions, which are subject to regulatory approval in the United Kingdom, are expected to close late in the first quarter or early in the second quarter of fiscal 2006. If the transactions close, as expected, all of the franchised locations in the United Kingdom will become company owned stores.

All of our non-U.S. and Canadian stores are operated by third party franchisees under separate master franchise agreements covering each country. Master franchise rights are typically granted to a franchisee for an entire country or group of countries for a specified term. The terms of these master franchise agreements vary by country but typically provide that we receive an initial, one-time franchise fee and continuing franchise fees based on a percentage of sales made by the franchisees' stores. The terms of these agreements range up to ten years with a franchise option to renew for an additional term if certain conditions are met. All such franchised stores have similar signage, store layout and merchandise characteristics to our stores in the United States and Canada. Our goal is to have well-capitalized franchisees with expertise in retail operations and real estate in their respective country. We work in conjunction with our franchisees in the development of their business and store growth plans. We approve all franchisees' orders for merchandise and have oversight of their operational and business practices in an effort to ensure they are in compliance with our standards. We expect our current and anticipated franchisees to open approximately 20 new stores in fiscal 2006 in both existing and new countries.

Sourcing and Inventory Management

We do not own or operate any manufacturing facilities. Our animal skins, stuffing, clothing and accessories are produced by factories located primarily in China. We purchased approximately 86% of our inventory in fiscal 2005, approximately 85% in fiscal 2004 and approximately 84% in fiscal 2003 from three vendors. After specifying the details and requirements for our products, our

vendors contract orders with multiple manufacturing facilities in Asia that are approved by us based on our quality control and labor standards. Our suppliers can be used interchangeably as each has a sourcing network for multiple product categories and can expand its factory network as needed. Our relationships with our vendors generally are on a purchase order basis and do not provide a contractual obligation to provide adequate supply, quality or acceptable pricing on a long-term basis.

The average time from the beginning of production to arrival of the products into our stores is approximately 90 to 120 days. Our weekly tracking and reporting tools give us the capabilities to promptly adjust to shifts in demand and help us to negotiate prices with our vendors. Through a regular analysis of selling trends, we periodically update our product assortment by increasing productive styles and eliminating less productive SKUs. Our distribution centers provide further logistical efficiencies for delivering merchandise to our stores.

Distribution and Logistics

A third-party provider warehouses and distributes a large portion of our merchandise at a 200,000 square foot distribution center in St. Louis, Missouri under an agreement that expires on August 31, 2006. We are currently in the process of constructing a new 350,000-square-foot distribution center near Columbus, Ohio which will replace this third-party warehouse. This facility is expected to become fully operational in fall 2006. We also have smaller third-party distribution centers in Toronto, Canada under an agreement that may be terminated with 120-day notice or when no work has been performed for 180 days and Los Angeles, California under an agreement that expires on March 30, 2007. All items in our assortment are eligible for distribution, depending on allocation and fulfillment requirements, and we typically distribute merchandise and supplies to each store once per week on a regular schedule which allows us to consolidate shipments in order to reduce distribution and shipping costs. Store shipments from our third-party distribution centers are scheduled throughout the week in order to smooth workflow and stores that are part of the same shipping route are grouped together to reduce freight costs.

Transportation from the warehouses to the stores is managed by several third-party logistics providers. Merchandise is ground-shipped to one of 74 third-party pool points which then deliver merchandise to the stores on a pre-arranged schedule. Back-up supplies, such as Cub Condo carrying cases and stuffing for the animals, are often stored in limited amounts at these local pool points.

Management Information Systems and Technology

Management information systems are a key component of our business strategy and we are committed to utilizing technology to enhance our competitive position. Our information and operational systems utilize a broad range of both purchased and internally developed applications which support our guest relationships, marketing, financial, retail operations, real estate, merchandising, and inventory management processes. Our employees can securely access these systems over a company-wide network. Sales, daily deposit and Guest information are automatically collected from the stores' point-of-sale terminals and kiosks on a near real time basis. We have developed proprietary software including domestic and international versions of our Name Me kiosk, Find-A-Bear® identification, and our patented party scheduling systems. Data from these systems are used to support key decisions in all areas of our business, including merchandising, allocation and operations.

We completed the installation of our new e-commerce software for our website in October 2004, the installation of our new point-of-sale system was completed in fiscal 2005 and the implementation of our new merchandise planning system is expected to be completed by the second quarter of fiscal 2006**.** These new systems are intended to improve our operational efficiency, purchasing and inventory control processes. To further improve our operations, we have begun implementation of human resources, financial management and warehouse management systems which we expect to begin to utilize in fiscal 2006.

We regularly evaluate strategic information technology initiatives focused on competitive differentiation, support of corporate strategy and reinforcement of our internal support systems. Our critical systems are reviewed on a regular basis to evaluate disaster recovery plans and the security of our systems.

Competition

We view our Build-A-Bear Workshop experience as a distinctive combination of entertainment and retail. Because we are mall-based, we see our competition as those mall-based retailers that compete for prime mall locations, including various apparel, footwear and specialty retailers. We also compete with toy retailers, such as Wal-Mart, Toys "R" Us, Target, Kmart and Sears and other discount chains, as well as with a number of companies that sell teddy bears in the United States, including, but not limited to, Ty, Fisher Price, Mattel, Russ Berrie, Applause, Boyd's, Hasbro, Commonwealth, Gund and Vermont Teddy Bear. Since we sell a product that integrates merchandise and experience, we also view our competition as any company that competes for our guests' time and entertainment dollars, such as movie theaters, amusement parks and arcades, and other mall-based entertainment venues.

We are aware of several small companies that operate "make your own" teddy bear and stuffed animal stores or kiosks in retail locations, but we believe none offers the breadth and depth of the Build-A-Bear Workshop experience or operates as a national retail company.

Intellectual Property and Trademarks

As of December 31, 2005, we had obtained over 175 U.S. trademark registrations, including Build-A-Bear Workshop® for stuffed animals and accessories for the animals, retail store services and other goods and services, over 30 issued U.S. patents with expirations ranging from 2013 through 2020 and over 120 copyright registrations. In addition, we have over 75 U.S. trademark and four U.S. patent applications pending. We also license three patents from third-parties, including a patent for the pre-stitching system used for closing up our stuffed animals after they have been stuffed (U.S. Patent No. 6,109,196). Pursuant to an exclusive patent license agreement with Tonyco, Inc. dated March 12, 2001, we were granted an exclusive license for use of the patent in retail stores similar to ours. While we have the right to sublicense the patent, the licensor has agreed not to grant rights to any of our competitors. In the event that we or the licensor has reason to believe that a third party is infringing upon the patent, the licensor is generally required to bear the expenses required to maintain and defend the patent. The term of the agreement is for the full life of the patent and any improvements thereon. The term will expire in 2019 unless we terminate the agreement, upon notice to the licensor, in the event that the patent lapses due to the licensor's non-payment of maintenance taxes and fees for the patent. We paid the licensor $760,000 for the license. All payments due under the license have been made and no ongoing payments are required by us.

We believe our copyrights, service marks, trademarks, trade secrets, patents and similar intellectual property are critical to our success, and we intend, directly or indirectly, to maintain and protect these marks and, where applicable, license the intellectual property and the registrations for the intellectual property. We rely on trademark, copyright and other intellectual property law to protect our proprietary rights to the extent available in any relevant jurisdiction. We also depend on trade secret protection through confidentiality and license agreements with our employees, subsidiaries, licensees, licensors and others. We may not have agreements containing adequate protective provisions in every case, and the contractual provisions that are in place may not provide us with adequate protection in all circumstances. Any infringement or misappropriation of our intellectual property rights or breach of our confidentiality or license agreements could result in significant litigation costs, and any failure to adequately protect our proprietary rights could result in our competitors offering similar products, potentially resulting in loss of one or more competitive advantages and decreased revenues. In addition, intellectual property litigation or claims could force us to do one or more of the following: cease selling or using any of our products that incorporate the challenged intellectual property, which would adversely affect our revenue; obtain a license from the holder of the intellectual property right alleged to have been infringed, which license may not be available on reasonable terms, if at all; and redesign or, in the case of trademark claims, rename our products to avoid infringing the intellectual property rights of third parties, which may not be possible and time-consuming if it is possible to do so.

Despite our efforts to protect our intellectual property rights, intellectual property laws afford us only limited protection. A third party could copy or otherwise obtain information from us without authorization. Accordingly, we may not be able to prevent misappropriation of our intellectual property or to deter others from developing similar products or services. Further, monitoring the unauthorized use of our intellectual property is difficult. Litigation has been and may continue to be necessary to enforce our intellectual property rights or to determine the validity and scope of the proprietary rights of others. Litigation of this type could result in substantial costs and diversion of resources, may result in counterclaims or other claims against us and could significantly harm our results of operations. In addition, the laws of some foreign countries do not protect our proprietary rights to the same extent as do the laws of the United States.

We also conduct business in foreign countries to the extent our merchandise is manufactured or sold outside the United States and have opened stores outside the United States in the past three years, either directly or indirectly through franchisees. We filed, obtained or plan to file for registration of marks in foreign countries to the degree necessary to protect these marks, although our efforts may not be successful and further there may be restrictions on the use of these marks in some jurisdictions.

Segments and Geographic Areas

We conduct our operations through three reportable segments consisting of retail operations, international, and licensing and entertainment. The retail operations segment includes the operating activities of the stores in the United States and Canada and other retail delivery operations, including our web-store and non-mall locations such as tourist venues and ballpark stores. The international segment includes the licensing activities of our franchise agreements with locations outside of the United States. The licensing and entertainment segment has been established to market the naming and branding rights of our intellectual properties for third party use. See the financial statements included elsewhere in this annual report on Form 10-K for further discussion and financial information related to our segments.

Our reportable segments are primarily determined by the types of products and services that they offer. Each reportable segment may operate in many geographic areas. See the financial statements included elsewhere in this annual report on Form 10-K for further discussion and financial information related to geographic areas in which we operate.

Availability of Information

We make certain filings with the SEC, including our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and all amendments and exhibits to those reports, available free of charge in the Investor Relations section of our corporate

website, http://ir.buildabear.com, as soon as reasonably practicable after they are filed with the SEC. The filings are also available through the SEC at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549 or by calling 1-800-SEC-0330. Also, these filings are available on the internet at http://www.sec.gov. Our annual reports to shareholders, press releases and recent analyst presentations are also available on our website in the Investor Relations section or by writing to the Investor Relations department at World Bearquarters, 1954 Innerbelt Business Center Dr., St. Louis, MO 63114.

ITEM 1A. RISK FACTORS

We operate in a changing environment that involves numerous known and unknown risks and uncertainties that could materially affect our operations. The risks, uncertainties and other factors set forth below may cause our actual results, performances or achievements to be materially different from those expressed or implied by our forward-looking statements. If any of these risks or events occur, our business, financial condition or results of operations may be adversely affected.

Risks Related to Our Business

If we are not able to generate or maintain comparable store sales growth, our results of operations could be adversely affected.

Our comparable store sales for fiscal 2005 declined by 0.2%, following an increase of 18.1% in fiscal 2004. The increase in 2004 was principally as a result of the nationwide multi-media marketing program we initiated in February 2004 and an improved economy. Our comparable store sales declined 15.9% in fiscal 2003. We believe the principal factors that will affect comparable store results are the following:

- the continuing appeal of our concept;
- the effectiveness of our marketing efforts to attract new and repeat guests;
- consumer confidence and general economic conditions;
- our ability to anticipate and to respond, in a timely manner, to consumer trends;
- the continued introduction and expansion of our merchandise offerings;
- the impact of new stores that we open in existing markets;
- mall traffic;
- competition;
- the timing and frequency of national media appearances and other public relations events; and
- weather conditions.

As a result of these and other factors, we may not be able to generate or maintain comparable stores sales growth in the future. If we are unable to do so, our results of operations could be significantly harmed.

Our future growth and profitability could be adversely affected if our marketing initiatives are not effective in generating sufficient levels of brand awareness and guest traffic.

In February 2004, after development and testing in selected markets, we introduced nationwide a multi-media marketing program targeting our core demographic guests, principally parents and children, which contributed to an increase in our comparable store sales in fiscal 2004. Our future growth and profitability will depend in large part upon the effectiveness and efficiency of this marketing program and future marketing efforts that we undertake, including our ability to:

- create greater awareness of our brand, interactive shopping experience and products;
- identify the most effective and efficient level of spending in each market;
- determine the appropriate creative message and media mix for marketing expenditures;
- effectively manage marketing costs (including creative and media) in order to maintain acceptable operating margins and return on marketing investment;
- select the right geographic areas in which to market; and
- convert consumer awareness into actual store visits and product purchases.

Our planned marketing expenditures may not result in increased total or comparable store sales or generate sufficient levels of product and brand name awareness. We may not be able to manage our marketing expenditures on a cost-effective basis.

Our growth strategy requires us to open a significant number of new stores in the United States and Canada each year. If we are not able to open new stores or to effectively manage this growth, it could adversely affect our ability to grow and could significantly harm our profitability.

Our growth will largely depend on our ability to open and operate new stores successfully in the United States and Canada. We opened 30, 21, and 43 stores in fiscal 2005, 2004, and 2003, respectively. We plan to open approximately 30 new stores in the United States and Canada in fiscal 2006 and anticipate further store openings in subsequent years. Our ability to identify and open new stores

in desirable locations and operate such new stores profitably is a key factor in our ability to grow successfully. We cannot assure you as to when or whether desirable locations will become available, the number of Build-A-Bear Workshop stores that we can or will ultimately open, or whether any such new stores can be profitably operated. We have not always succeeded in identifying desirable locations or in operating our stores successfully in those locations. For example, as of March 10, 2006, we have closed two stores since our inception. We cannot assure you that we will not have other stores in the future that we may decide to close. Our ability to open new stores and to manage our growth also depends on our ability to:

- negotiate acceptable lease terms, including desired tenant improvement allowances;
- finance the preopening costs, capital expenditures and working capital requirements of the stores;
- manage inventory to meet the needs of new and existing stores on a timely basis;
- hire, train and retain qualified store personnel;
- develop cooperative relationships with our landlords; and
- successfully integrate new stores into our existing operations.

In July 2005, we opened our flagship store in New York City. This store is much larger than our typical mall-based stores and includes additional facilities, such as a restaurant, that we do not operate in our typical mall-based stores. Because we have little experience with this type of store, we may be unable to generate revenues from this store at a level that justifies keeping the store open. Closing this store could not only have an adverse impact on our profitability, as the costs of opening this store were much larger than those for a typical store, but, as our flagship store, it could also have an adverse impact on the Build-A-Bear Workshop brand and consumer perception of our brand.

Increased demands on our operational, managerial and administrative resources as a result of our growth strategy could cause us to operate our business less effectively, which in turn could cause deterioration in our profitability.

If we are not able to franchise new stores outside of the United States and Canada, if we are unable to effectively manage our international franchises or if the laws relating to our international franchises change, our growth and profitability could be adversely affected and we could be exposed to additional liability.

In 2003, we began to expand the Build-A-Bear Workshop brand outside of the United States, opening our own stores in Canada and our first franchised location in the United Kingdom. We intend to continue expanding outside of the United States and Canada through franchising in several countries over the next several years. In addition, on March 3, 2006, we entered into a definitive agreement to acquire The Bear Factory Limited (The Bear Factory), a stuffed animal retailer in the U.K. owned by The Hamleys Group Limited. In a related agreement, Build-A-Bear Workshop will also acquire Amsbra Limited (Amsbra), our U.K. franchisee**.** These transactions, which are subject to regulatory approval in the U.K., are expected to close late in the first quarter or early in the second quarter of fiscal 2006. As of March 10, 2006. there were 30 Build-A-Bear Workshop franchised stores located outside of the United States and Canada, of which 11 stores were owned by our U.K. franchisee. We have limited experience in franchising and we may not be successful in maintaining and implementing our international franchising strategy. In addition, we cannot assure you that our franchisees will be successful in identifying and securing desirable locations or in operating their stores. These markets frequently have different demographic characteristics, competitive conditions, consumer tastes and discretionary spending patterns than our existing United States and Canadian markets, which may cause these stores to be less successful than those in our existing markets. Additionally, our franchisees may experience merchandising and distribution challenges that are different from those we currently encounter in our existing markets. The operations and results of our franchisees could be negatively impacted by the economic or political factors in the countries in which they operate. These challenges, as well as others, could have a material adverse effect on our business, financial condition and results of operations.

The success of our franchising strategy will depend upon our ability to attract qualified franchisees with sufficient financial resources to develop and grow the franchise operation and upon the ability of those franchisees to develop and operate their franchised stores. Franchisees may not operate stores in a manner consistent with our standards and requirements, may not hire and train qualified managers and other store personnel and may not operate their stores profitably. As a result, our franchising strategy may not be profitable to us. Moreover, our image and reputation may suffer. For example, our initial franchisees in South Korea and France performed below expectations and we transferred those agreements to other parties. Furthermore, even if our international franchising strategy is successful, the interests of franchisees might sometimes conflict with our interests. For example, whereas franchisees are concerned with their individual business strategies and objectives, we are responsible for ensuring the success of the Build-A-Bear Workshop brand and all of our stores.

The laws of the various foreign countries in which our franchisees operate govern our relationships with our franchisees. These laws, and any new laws that may be enacted, may detrimentally affect the rights and obligations between us and our franchisees and could expose us to additional liability.

We may not be able to successfully integrate The Bear Factory and Amsbra.

Although we believe that our acquisitions of The Bear Factory and Amsbra will be highly complementary to and further strengthen our brand portfolio and expand our customer base, we may be unable to take advantage of these opportunities. We cannot

assure you that we will be able to successfully integrate the operations of these businesses into our existing business and increase sales, in particular because they involve foreign operations. To acquire and integrate both of these separate organizations could divert management attention from other business activities. This diversion, together with other difficulties we may encounter in integrating these acquired businesses, could have a material adverse effect on our business, financial condition and results of operations.

A business combination involves the integration of companies that previously have operated independently, which is a complex, costly and time-consuming process. Moreover, we will be integrating two disparate companies both with each other and with our domestic and Canadian operations. In particular, we will incur costs in connection with rebranding and store conversions for The Bear Factory and integration with both The Bear Factory and Amsbra. The difficulties of combining the companies' operations include, among other things:

- rebranding and store conversions with respect to the 29 Bear Factory stores we expect to acquire;
- coordinating geographically disparate organizations, systems and facilities;
- assimilating and retaining employees with diverse business backgrounds;
- consolidating corporate and administrative functions;
- limiting the diversion of management resources necessary to facilitate the integration;
- implementing compatible information and communication systems, as well as common operating procedures;
- creating compatible financial controls and comparable human resource management practices;
- coordinating sales and marketing functions;
- maintaining customer care services and retaining customers;
- addressing the expenses of any undisclosed or potential legal liabilities;
- retaining key management and employees; and
- preserving the collaboration, licensing, distribution, marketing, promotion and other important relationships of each company.

The process of integrating operations could cause an interruption of, or loss of momentum in, the activities of the combined company's business and the loss of key personnel. The diversion of management's attention, any delays or difficulties encountered in connection with the business combination and the integration of the two companies' operations or the costs associated with these activities could harm our business, results of operations, financial condition or prospects.

We may not be able to make the U.K businesses we are acquiring profitable.

Both The Bear Factory and Amsbra had losses in 2005 and prior fiscal years. Although we believe that we can make these operations profitable as part of our larger company through marketing, product, and store execution practices, we may be unable to do so. In particular, we may be unable to successfully leverage our purchasing power and know-how, and may be unable to raise sales levels sufficiently to generate profitable operations. In addition, other than Canada, we have not directly operated non-U.S. businesses, and we will face business, regulatory and cultural differences from our domestic business, such as economic conditions in the U.K., changes in foreign government policies and regulations in the U.K. and potential restrictions on the right to convert and repatriate currency, as well as other risks that we may not anticipate.

If we are unable to generate interest in and demand for our interactive retail experience, including being able to identify and respond to consumer preferences in a timely manner our financial condition and profitability could be adversely affected.

We believe that our success depends in large part upon our ability to continue to attract guests with our interactive shopping experience and our ability to anticipate, gauge and respond in a timely manner to changing consumer preferences and fashion trends. We cannot assure you that our past success will be sustained or there will continue to be a demand for our "make-your-own stuffed animal" interactive experience, or for our stuffed animals, animal apparel and accessories. A decline in demand for our interactive shopping experience, our animals, animal apparel or accessories, or a misjudgment of consumer preferences or fashion trends, could have a negative impact on our business, financial condition and results of operations. Furthermore, we may be unable to attract guests

to and generate demand for our new Friends 2B Made interactive shopping experience. If our Friends 2B Made concept fails to be successful and we determine not to continue it, we may incur charges as a result and it may have an adverse impact on the Build-A-Bear Workshop brand. In addition, if we miscalculate the market for our merchandise or the purchasing preferences of our guests, we may be required to sell a significant amount of our inventory at discounted prices or even below costs, thereby adversely affecting our financial condition and profitability.

A decrease in the customer traffic generated by the shopping malls in which we are located, which we depend upon to attract guests to our stores, could adversely affect our financial condition and profitability.

While we invest heavily in integrated marketing efforts and believe we are more of a destination location than traditional retailers, we rely to a great extent on customer traffic in the malls in which our stores are located. In order to generate guest traffic, we generally attempt to locate our stores in prominent locations within high traffic shopping malls. We rely on the ability of the malls' anchor tenants, generally large department stores, and on the continuing popularity of malls as shopping destinations. We cannot control the development of new shopping malls, the addition or loss of anchors and co-tenants, the availability or cost of appropriate locations within existing or new shopping malls or the desirability, safety or success of shopping malls. If we are unable to generate sufficient guest traffic, our sales and results of operations would be harmed. A significant decrease in shopping mall traffic could have a material adverse effect on our financial condition and profitability.

A decline in general economic conditions could lead to reduced consumer demand for our products and have an adverse affect on our liquidity and profitability.

Since purchases of our merchandise are dependent upon discretionary spending by our guests, our financial performance is sensitive to changes in overall economic conditions that affect consumer spending. Consumer spending habits are affected by, among other things, prevailing economic conditions, levels of employment, salaries and wage rates, consumer confidence and consumer perception of economic conditions. A general or perceived slowdown in the United States or Canadian economy or uncertainty as to the economic outlook could reduce discretionary spending or cause a shift in consumer discretionary spending to other products. Any of these factors would likely cause us to delay or slow our expansion plans, result in lower net sales and could also result in excess inventories, which could, in turn, lead to increased merchandise markdowns and related costs associated with higher levels of inventory and adversely affect our liquidity and profitability.

Our market share may be adversely impacted at any time by a significant number of competitors.

We operate in a highly competitive environment characterized by low barriers to entry. We compete against a diverse group of competitors. Because we are mall-based, we see our competition as those mall-based retailers that compete for prime mall locations, including various apparel, footwear and specialty retailers. We also compete with toy retailers, such as Wal-Mart, Toys "R" Us, Target, Kmart and Sears and other discount chains, as well as with a number of manufacturers that sell plush toys in the United States and Canada, including, but not limited to, Ty, Fisher Price, Mattel, Russ Berrie, Applause, Boyd's, Hasbro, Commonwealth, Gund and Vermont Teddy Bear. Since we offer our guests an experience as well as merchandise, we also view our competition as any company that competes for our guests' time and entertainment dollars, such as movie theaters, restaurants, amusement parks and arcades. In addition, there are several small companies that operate "make your own" teddy bear and stuffed animal experiences in retail stores and kiosks. Although we believe that currently none of these companies offers the breadth and depth of the Build-A-Bear Workshop products and experience, we cannot assure you that they will not compete directly with us in the future.

Many of our competitors have longer operating histories, significantly greater financial, marketing and other resources, and greater name recognition. We cannot assure you that we will be able to compete successfully with them in the future, particularly in geographic locations that represent new markets for us. If we fail to compete successfully, our market share and results of operations could be materially and adversely affected.

We may not be able to operate successfully if we lose key personnel, are unable to hire qualified additional personnel, or experience turnover of our management team.

The success of our business depends upon our senior management closely supervising all aspects of our business, in particular the operation of our stores and the design, procurement and allocation of our merchandise. Also, because guest service is a defining feature of the Build-A-Bear Workshop corporate culture, we must be able to hire and train qualified managers and Bear Builder associates to succeed. The loss of certain key employees, including Maxine Clark, our founder and Chief Executive Bear, or other members of our senior management, our inability to attract and retain other qualified key employees or a labor shortage that reduces the pool of qualified store associates could have a material adverse effect on our business, financial condition and results of operations. We generally do not maintain key person insurance with respect to our executives, management or other personnel, except for limited coverage of our Chief Executive Bear which we do not believe would be sufficient to completely protect us against losses we may suffer if her services were to become unavailable to us in the future.

We rely on a few vendors to supply substantially all of our merchandise, and any disruption in their ability to deliver merchandise

could harm our ability to source products and supply inventory to our stores.

We do not own or operate any manufacturing facilities. We purchased approximately 86% of our merchandise in fiscal 2005, approximately 85% in fiscal 2004, and approximately 84% in fiscal 2003, from three vendors. These vendors in turn contract for our orders with multiple manufacturing facilities for the production of merchandise. Our relationships with our vendors generally are on a purchase order basis and do not provide a contractual obligation to provide adequate supply, quality or acceptable pricing on a long-term basis. Our vendors could discontinue sourcing merchandise for us at any time. If any of our significant vendors were to discontinue their relationship with us, or if the factories with which they contract were to suffer a disruption in their production, we may be unable to replace the vendors in a timely manner, which could result in short-term disruption to our inventory flow as we transition our orders to new vendors or factories which could, in turn, disrupt our store operations and have an adverse effect on our business, financial condition and results of operations.

Our merchandise is manufactured by foreign manufacturers; therefore the availability and costs of our products may be negatively affected by risks associated with international manufacturing and trade.

We purchase our merchandise from domestic vendors who contract with manufacturers in foreign countries, primarily in China. Any event causing a disruption of imports, including the imposition of import restrictions or labor strikes or lock-outs, could adversely affect our business. For example, in fiscal 2002, we experienced disruption to our import of merchandise as well as increased shipping costs associated with a dock-worker labor dispute. The flow of merchandise from our vendors could also be adversely affected by financial or political instability in any of the countries in which the goods we purchase are manufactured, especially China, if the instability affects the production or export of merchandise from those countries. Trade restrictions in the form of tariffs or quotas, or both, applicable to the products we sell could also affect the importation of those products and could increase the cost and reduce the supply of products available to us. In addition, decreases in the value of the U.S. dollar against foreign currencies, particularly the Chinese renminbi, could increase the cost of products we purchase from overseas vendors.

Our profitability could be adversely affected by high petroleum products prices.

The profitability of our business depends to a certain degree upon the price of petroleum products, both as a component of the transportation costs for delivery of inventory from our vendors to our stores and as a raw material used in the production of our animal skins. Petroleum prices have recently risen to historic or near historic highs. For example, our results in fiscal 2005 were impacted by fuel surcharges due to higher petroleum products prices. We are unable to predict what the price of crude oil and the resulting petroleum products will be in the future. We may be unable to pass along to our customers the increased costs that would result from higher petroleum prices. Therefore, any such increase could have an adverse impact on our business and profitability.

We are constructing our own warehouse and distribution center. If we are unable to run this facility effectively or efficiently, our business would be disrupted and our operating results would suffer.

The efficient operation of our stores is dependent on our ability to distribute merchandise to locations throughout the United States and Canada in a timely manner. We entered into a construction agreement to build a 350,000-square-foot distribution center in Groveport, Ohio for approximately $14.4 million, excluding costs for the land and the equipment for the facility. Although we expect the facility to become fully operational beginning in fall 2006, we could be subject to unexpected delays in the construction or cost overruns due to factors beyond our control. In addition, we have in the past relied on third parties to manage the warehousing and distribution aspects of our business. Although we have added key personnel with experience in the management of warehouses and distribution centers, we do not have extensive experience in this area, and we may not be able to manage these functions as well as our current third party providers, which could disrupt our business. Even if we are able to manage this aspect of our business effectively, we may not realize all of the cost efficiencies and other benefits we currently expect from owning and operating the Groveport distribution center, which would adversely affect our results of operations.

We currently rely on third parties to manage the warehousing and distribution aspects of our business. If these third parties do not adequately perform these functions, our business would be disrupted.

We currently depend on third party distribution centers in St. Louis, Missouri, Los Angeles, California and Toronto, Canada to receive and warehouse substantially all of our merchandise and supplies. We also rely on additional third parties to ship all of our merchandise and supplies from the distribution centers to our stores. While we will eliminate some of these functions as a result of operating the Ohio distribution center, we will continue to rely significantly on third party service providers in this area. Events such as fires, tornadoes, earthquakes or other catastrophic events, malfunctions of our third party distributors' distribution information systems, shipping problems or termination of our distribution agreements by such distributors would result in delays or disruptions in the timely distribution of merchandise and supplies to our stores, which could have a material adverse effect on our business, financial condition and results of operations.

Fluctuations in our quarterly results of operations could cause the price of our common stock to substantially decline.

Retailers generally are subject to fluctuations in quarterly results. Our operating results for one period may not be indicative of

results for other periods, and may fluctuate significantly due to a variety of factors, including:

- the timing of new store openings and related expenses;
- the profitability of our stores;
- increases or decreases in comparable store sales;
- the timing and frequency of our marketing initiatives;
- changes in general economic conditions and consumer spending patterns;
- changes in consumer preferences;
- the continued introduction and expansion of merchandise offerings;
- the effectiveness of our inventory management;
- actions of competitors or mall anchors and co-tenants;
- seasonal shopping patterns, including whether the Easter holiday occurs in the first or second quarter and other vacation schedules;
- the timing and frequency of national media appearances and other public relations events; and
- weather conditions.

If our future quarterly results fluctuate significantly or fail to meet the expectations of the investment community, then the market price of our common stock could decline substantially.

Our failure to renew, register or otherwise protect our trademarks could have a negative impact on the value of our brand names and our ability to use those names in certain geographical areas.

We believe our copyrights, service marks, trademarks, trade secrets, patents and similar intellectual property are critical to our success. We rely on trademark, copyright and other intellectual property laws to protect our proprietary rights. We also depend on trade secret protection through confidentiality and license agreements with our employees, subsidiaries, licensees, licensors and others. We may not have agreements containing adequate protective provisions in every case, and the contractual provisions that are in place may not provide us with adequate protection in all circumstances. The unauthorized reproduction or other misappropriation of our intellectual property could diminish the value of our brand, competitive advantages or goodwill and result in decreased revenues.

Despite our efforts to protect our intellectual property rights, intellectual property laws afford us only limited protection. A third party could copy or otherwise obtain information from us without authorization. Accordingly, we may not be able to prevent misappropriation of our intellectual property or to deter others from developing similar products or services. Further, monitoring the unauthorized use of our intellectual property is difficult. Litigation has been and may continue to be necessary to enforce our intellectual property rights or to determine the validity and scope of the proprietary rights of others. Litigation of this type has resulted in and could result in further substantial costs and diversion of resources, may result in counterclaims or other claims against us and could significantly harm our results of operations. In addition, the laws of some foreign countries do not protect our proprietary rights to the same extent as do the laws of the United States.

We may have disputes with, or be sued by, third parties for infringement or misappropriation of their proprietary rights, which could have a negative impact on our business.

Other parties have asserted in the past, and may assert in the future, trademark, patent, copyright or other intellectual property rights that are important to our business. We cannot assure you that others will not seek to block the use of or seek monetary damages or other remedies for the prior use of our brand names or other intellectual property or the sale of our products or services as a violation of their trademark, patent or other proprietary rights. Defending any claims, even claims without merit, could be time-consuming, result in costly settlements, litigation or restrictions on our business and damage our reputation.

In addition, there may be prior registrations or use of intellectual property in the U.S. or foreign countries for similar or competing marks or other proprietary rights of which we are not aware. In all such countries it may be possible for any third party owner of a national trademark registration or other proprietary right to enjoin or limit our expansion into those countries or to seek damages for our use of such intellectual property in such countries. In the event a claim against us were successful and we could not obtain a license to the relevant intellectual property or redesign or rename our products or operations to avoid infringement, our business, financial condition or results of operations could be harmed. Securing registrations does not fully insulate us against intellectual property claims, as another party may have rights superior to our registration or our registration may be vulnerable to attack on various grounds.

If we are unable to renew or replace our store leases or enter into leases for new stores on favorable terms, or if we violate any of the terms of our current leases, our growth and profitability could be harmed.

We lease all of our store locations. The majority of our store leases contain provisions for base rent plus percentage rent based on sales in excess of an agreed upon minimum annual sales level. A number of our leases include a termination provision which applies if we do not meet certain sales levels during a specified period, typically in the third to fourth year of the lease. In addition, most of our

leases will expire within the next ten years and generally do not contain options to renew. Furthermore, some of these leases contain various restrictions relating to change of control of our company. Our leases also subject us to risks relating to compliance with changing mall rules and the exercise of discretion by our landlords on various matters within the malls. In addition, the lease for our store in the DOWNTOWN DISNEY® District at the DISNEYLAND® Resort in Anaheim, California provides that the landlord may terminate the lease at any time, subject to the payment of an early termination fee. As a result, we cannot assure you that the landlord will not exercise its right to terminate this lease.

We may suffer negative publicity or be sued if the manufacturers of our merchandise violate labor laws or engage in practices that our guests believe are unethical, or if our products are recalled or cause injuries.

We rely on our sourcing personnel to select manufacturers with legal and ethical labor practices, but we cannot control the business and labor practices of our manufacturers. If one of these manufacturers violates labor laws or other applicable regulations or is accused of violating these laws and regulations, or if such a manufacturer engages in labor or other practices that diverge from those typically acceptable in the United States, we could in turn experience negative publicity or be sued.

Many of our products are used by small children and infants who may be injured from usage. We may decide or be required to recall products or be subject to claims or lawsuits resulting from injuries. For example, in January 2003 we voluntarily recalled a product due to a possible safety issue, for which a vendor reimbursed us for certain related expenses. Negative publicity in the event of any recall or if any children are injured from our products could have a material adverse effect on sales of our products and our business, and related recalls or lawsuits with respect to such injuries could have a material adverse effect on our financial position. Although we currently have liability insurance, we cannot assure you that it would cover product recalls and we face the risk that claims or liabilities will exceed our insurance coverage. Furthermore, we may not be able to maintain adequate liability insurance in the future.

Portions of our business are subject to privacy and security risks. If we improperly obtain, or are unable to protect, information from our guests, we could be subject to liability and damage to our reputation.

In addition to serving as an online sales portal, our website, *www.buildabear.com*, features children's games, e-cards and printable party invitations and thank-you notes, and provides an opportunity for children under the age of 13 to sign up, with the consent of their parent or guardian, to receive our online newsletter. We currently obtain and retain personal information about our website users. In addition, we obtain personal information about our guests as part of their registration in our Find-A-Bear® identification system. Federal, state and foreign governments have enacted or may enact laws or regulations regarding the collection and use of personal information, with particular emphasis on the collection of information regarding minors. Such regulations include or may include requirements that companies establish procedures to:

- give adequate notice regarding information collection and disclosure practices;
- allow consumers to have personal information deleted from a company's database;
- provide consumers with access to their personal information and the ability to rectify inaccurate information;
- obtain express parental consent prior to collecting and using personal information from children; and
- comply with the Federal Children's Online Privacy Protection Act.

Such regulation may also include enforcement and redress provisions. While we have implemented programs and procedures designed to protect the privacy of people, including children, from whom we collect information, and our website is designed to be fully compliant with the Federal Children's Online Privacy Protection Act, there can be no assurance that such programs will conform to all applicable laws or regulations.

We have a stringent privacy policy covering the information we collect from our guests and have established security features to protect our guest database and website. However, our security measures may not prevent security breaches. We may need to expend significant resources to protect against security breaches or to address problems caused by breaches. If third persons were able to penetrate our network security and gain access to, or otherwise misappropriate, our guests' personal information, it could harm our reputation and, therefore, our business and we could be subject to liability. Such liability could include claims for misuse of personal information or unauthorized use of credit cards. These claims could result in litigation, our involvement in which, regardless of the outcome, could require us to expend significant financial resources. In addition, because our guest database primarily includes personal information of young children and young children frequently interact with our website, we are potentially vulnerable to charges from parents, children's organizations, governmental entities, and the media of engaging in inappropriate collection, distribution or other use of data collected from children. Such charges could adversely impact guest relationships and ultimately cause a decrease in net sales and also expose us to litigation and possible liability.

Risks Related to Owning Our Common Stock

The market price of our common stock may be materially adversely affected by market volatility which could result in costly and time-consuming securities litigation.

The market price of our common stock could be subject to significant fluctuations. Among the factors that could affect our stock price are:

- actual or anticipated variations in comparable store sales or operating results;
- changes in financial estimates by the investment community;
- actual or anticipated changes in economic, political or market conditions, such as recessions or international currency fluctuations;
- changes in the retailing environment;
- changes in the market valuations of other specialty retail companies;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, divestitures, joint ventures or other strategic initiatives; and
- losses of key members of management.

In addition, we cannot assure you that an active trading market for our common stock will continue which could affect our stock price and the liquidity of any investment in our common stock.

The stock markets in general have experienced substantial volatility that has often been unrelated to the operating performance of individual companies. These broad market fluctuations may adversely affect the trading price of our common stock.

In the past, following periods of volatility in the market price of a company's securities, stockholders have often instituted class action securities litigation against those companies. Such litigation, if instituted, could result in substantial costs and a diversion of management attention and resources, which would significantly harm our profitability and reputation.

Our certificate of incorporation and bylaws and Delaware law contain provisions that may prevent or frustrate attempts to replace or remove our current management by our stockholders, even if such replacement or removal may be in our stockholders' best interests.

Our basic corporate documents and Delaware law contain provisions that might enable our management to resist a takeover. These provisions:

- restrict various types of business combinations with significant stockholders;
- provide for a classified board of directors;
- limit the right of stockholders to remove directors or change the size of the board of directors;
- limit the right of stockholders to fill vacancies on the board of directors;
- limit the right of stockholders to act by written consent and to call a special meeting of stockholders or propose other actions;
- require a higher percentage of stockholders than would otherwise be required to amend, alter, change or repeal our bylaws and certain provisions of our certificate of incorporation; and
- authorize the issuance of preferred stock with any voting rights, dividend rights, conversion privileges, redemption rights and liquidation rights and other rights, preferences, privileges, powers, qualifications, limitations or restrictions as may be specified by our board of directors.

These provisions may:

- discourage, delay or prevent a change in the control of our company or a change in our management, even if such change may be in the best interests of our stockholders;
- adversely affect the voting power of holders of common stock; and
- limit the price that investors might be willing to pay in the future for shares of our common stock.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2. PROPERTIES

Stores

As of March 10, 2006, we operated 200 retail stores located primarily in major malls throughout the United States and Canada. Our mall-based stores generally range in size from 2,000 to 4,000 square feet and average approximately 3,000 square feet, while our tourist location stores currently range up to 6,000 square feet and our flagship store in New York City is approximately 20,000 square feet. Our stores are designed to be open and inviting for guests of all ages with an entryway that spans the majority of our storefront with wide aisles to accommodate families or groups. Our typical store has an oversized "sentry bear" at the front entry and features two stuffing machines, five NameMe computer stations, display units and flooring to enhance the guest traffic flow through the store. We select malls and make site selections within the mall based upon demographic analysis, market research, site visits and mall dynamics as well as a forecasting model that projects a potential location's first year sales. We have identified a significant number of target sites that meet our criteria for new stores in malls and tourist locations. We seek to locate our mall-based stores near major customer entrances to or in the center of malls and adjacent to other children, teen and family retailers. After we approve a site, it typically takes approximately 23 weeks to finalize the lease, design the layout, build out the site, hire and train associates, and stock the store for opening.

We lease all of our store locations. Due to our attraction as a family-oriented entertainment destination concept with average net sales per gross square foot that, in fiscal 2005, generally exceeded the average for the malls in which we operated, we have received numerous requests from mall owners and developers to locate a Build-A-Bear Workshop store in their malls. We believe that we generally have negotiated favorable exclusivity provisions in our leases.

Most of our leases have an initial term of ten years. A number of our leases provide a lease termination or "kick out" option to either party in a pre-determined year or years, typically the third or fourth year of the lease, if we do not meet certain agreed upon minimum sales levels. In addition, our leases typically require us to pay personal property taxes, our pro rata share of real property taxes of the shopping mall, our own utilities, repairs and maintenance in our store, a pro rata share of the malls' common area maintenance and, in some instances, merchant association fees and media fund contributions. Most of our leases also require the payment of a fixed minimum rent as well as percentage rent based on sales in excess of agreed upon minimum annual sales levels.

Following is a list of our 200 stores in the United States and Canada by state and province as of March 10, 2006:

State	Number of Stores
Alabama	2
Arizona	4
Arkansas	1
California	16
Colorado	5
Connecticut	4
Delaware	1
Florida	8
Georgia	6
Hawaii	1
Idaho	1
Illinois	7
Indiana	6
Iowa	2
Kansas	2
Kentucky	2
Louisiana	1
Maine	1
Maryland	4
Massachusetts	8
Michigan	3
Minnesota	2
Mississippi	1
Missouri	5
Nebraska	1
Nevada	3
New Hampshire	2
New Jersey	12
New York	11
North Carolina	7
Ohio	10
Oklahoma	2
Oregon	2

State	Number of Stores
Pennsylvania	8
Rhode Island	1
South Carolina	3
Tennessee	6
Texas	15
Utah	2
Virginia	6
Washington	3
West Virginia	1
Wisconsin	3
Province	
Alberta	2
British Columbia	2
Nova Scotia	1
Ontario	4

Non-Store Properties

In addition to leasing all of our store locations, we lease approximately 52,000 square feet for our web fulfillment site and corporate headquarters, or World Bearquarters, in St. Louis, Missouri. Our World Bearquarters houses our corporate staff, our call center and our on-site training facilities. The lease commenced on January 1, 2005 with a four-year term, and may be extended for two additional five-year terms.

ITEM 3. LEGAL PROCEEDINGS

From time to time we are involved in ordinary routine litigation common to companies engaged in our line of business. We are involved in several court actions seeking to enforce our intellectual property rights or to determine the validity and scope of the proprietary rights of others. As of the date of this annual report on Form 10-K, we are not involved in any pending legal proceedings that we believe would be likely to have a material adverse effect on our financial condition or results of operations.

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

There were no matters submitted to a vote of security holders in the fourth quarter of fiscal 2005.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our common stock is listed on the New York Stock Exchange (NYSE) under the symbol "BBW." Our common stock commenced trading on the NYSE on October 28, 2004. The following table sets forth the high and low closing sale prices of our common stock for the periods indicated.

	Fiscal 2005		Fiscal 2004	
	High	Low	High	Low
First Quarter	$36.90	$29.44		
Second Quarter	$31.08	$20.31		
Third Quarter	$24.49	$19.86		
Fourth Quarter	$31.97	$21.44	$35.15	$23.55

Issuer Purchases of Equity Securities

We do not have any programs or plans to repurchase shares of our common stock and no such repurchases were made by us or any of our affiliate companies during the fourth quarter of fiscal 2005.

Recent Sales of Unregistered Securities

There were no sales of unregistered securities during the fourth quarter of fiscal 2005.

Dividend Policy

We paid a special $10.0 million cash dividend to our stockholders in August 2004. We anticipate that we will retain any future earnings to support operations and to finance the growth and development of our business, and we do not expect, at this time, to pay cash dividends in the future. Any future determination relating to our dividend policy will be made at the discretion of our board of directors and will depend on a number of factors, including future earnings, capital requirements, financial conditions, future prospects and other factors that the board of directors may deem relevant. Additionally, under our credit agreement, we are prohibited from declaring dividends without the prior consent of our lender, subject to certain exceptions, as described in "Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources."

ITEM 6. SELECTED FINANCIAL DATA

Throughout this annual report on Form 10-K, we refer to our fiscal years ended December 31, 2005, January 1, 2005, January 3, 2004, December 28, 2002, and December 29, 2001 as fiscal years 2005, 2004, 2003, 2002, and 2001, respectively. Our fiscal year consists of 52 or 53 weeks, and ends on the Saturday nearest December 31 in each year. Fiscal years 2005, 2004, 2002 and 2001 included 52 weeks and fiscal year 2003 included 53 weeks. All of our fiscal quarters presented in this annual report on Form 10-K included 13 weeks, except for the quarter ended January 3, 2004, which had 14 weeks. When we refer to our fiscal quarters, or any three month period ending as of a specified date, we are referring to the 13-week period prior to that date, except for the quarter ended January 3, 2004, where we are referring to the 14-week period prior to that date.

The following table sets forth, for the periods and dates indicated, our selected consolidated financial and operating data. The balance sheet data as of December 31, 2005 and January 1, 2005 and the statement of operations and other financial data for our fiscal years ended December 31, 2005, January 1, 2005, and January 3, 2004 are derived from our audited financial statements included elsewhere in this annual report on Form 10-K. The balance sheet data as of January 3, 2004, December 28, 2002, and December 29, 2001 and the statement of operations and other financial data for our fiscal years ended December 28, 2002 and December 29, 2001 are derived from our audited financial statements that are not included in this annual report on Form 10-K. You should read our selected consolidated financial and operating data in conjunction with our consolidated financial statements and related notes and with "Management's Discussion and Analysis of Financial Condition and Results of Operations" appearing elsewhere in this annual report on Form 10-K.

See the notes to our consolidated financial statements for an explanation of the method used to determine the numbers of shares used in computing basic and diluted net earnings per common share.

	Fiscal Year				
	2005	2004 (1)	2003 (1)	2002 (1)	2001 (1)
	(Dollars in thousands, except share, per share and per gross square foot data)				
Statement of operations data:					
Total revenues	$ 361,809	$ 301,662	$ 213,672	$ 169,138	$ 106,622
Costs and expenses:					
Cost of merchandise sold	180,373	150,903	115,845	90,215	56,294
Selling, general and administrative	133,921	115,993	81,533	66,068	41,405
Store preopening	4,812	2,186	3,859	3,949	3,921
Impairment charge (credit)	—	(54)	—	—	1,006
Litigation settlement	—	—	—	—	1,550
Interest expense (income), net	(1,710)	(299)	(58)	(88)	64
Total costs and expenses	317,396	268,729	201,179	160,144	104,240
Income before income taxes and minority interest	44,413	32,933	12,493	8,994	2,382
Minority Interest	—	—	—	—	122
Income before income taxes	44,413	32,933	12,493	8,994	2,504
Income tax expense	17,099	12,934	4,875	3,557	1,011
Net income	27,314	19,999	7,618	5,437	1,493
Cumulative dividends and accretion of redeemable preferred stock	—	1,262	1,970	1,971	824
Cumulative dividends on nonredeemable preferred stock	—	263	455	455	455
Net income available to common and participating preferred stockholders	$ 27,314	$ 18,474	$ 5,193	$ 3,011	$ 214
Net income allocated to common stockholders	$ 27,314	$ 8,519	$ 116	$ 67	$ 7
Net income allocated to participating preferred stockholders	$ —	$ 9,955	$ 5,077	$ 2,944	$ 207
Earnings per common share:					
Basic	$ 1.38	$ 2.30	$ 0.53	$ 0.31	$ 0.03
Diluted	$ 1.35	$ 1.07	$ 0.43	$ 0.29	$ 0.03
Shares used in computing common per share amounts:					
Basic	19,735,067	3,702,365	217,519	217,519	217,519
Diluted	20,229,978	18,616,435	17,546,348	12,055,458	9,101,143

	Fiscal Year				
	2005	2004 (1)	2003 (1)	2002 (1)	2001 (1)
	(Dollars in thousands, except share, per share and per gross square foot data)				
Other financial data:					
Gross margin ($) (2)	$178,528	$149,566	$ 97,582	$ 78,908	$ 50,328
Gross margin (%) (2)	49.7%	49.8%	45.7%	46.7%	47.2%
Capital expenditures (3)	$ 31,083	$ 16,494	$ 24,917	$ 24,017	$ 25,293
Depreciation and amortization	17,592	14,948	12,840	8,990	5,340
Cash flow data:					
Cash flows provided by operating activities	$ 54,642	$ 48,527	$ 31,770	$ 23,963	$ 18,150
Cash flows used in investing activities	(37,077)	(17,732)	(27,035)	(25,531)	(26,949)
Cash flows provided by (used in) financing activities	6,058	15,931	—	(121)	19,256
Cash dividends declared per common share	$ —	$ 0.55	$ —	$ —	$ —
Store data (4):					
Number of stores at end of period	200	170	150	108	71
Average net retail sales per store (5) (6)	$ 1,864	$ 1,857	$ 1,605	$ 1,904	$ 2,003
Net retail sales per gross square foot (6) (7)	$ 615	$ 602	$ 502	$ 582	$ 634
Comparable store sales change (%) (8)	(0.2)%	18.1%	(15.9)%	(9.7)%	(6.7)%
Balance sheet data:					
Cash and cash equivalents	$ 90,950	$ 67,327	$ 20,601	$ 15,866	$ 17,555
Working capital	66,646	48,000	10,463	7,376	10,172
Total assets	246,108	189,237	128,210	105,893	81,264
Redeemable preferred stock	—	—	37,890	35,920	33,964
Total stockholders' equity	130,357	95,510	19,845	14,192	10,727

(1) Certain prior year amounts have been reclassified to conform with the fiscal 2005 presentation.

(2) Gross margin represents net retail sales less cost of merchandise sold. Gross margin percentage represents gross margin divided by net retail sales.

(3) Capital expenditures consist of leasehold improvements, furniture and fixtures and computer equipment and software purchases.

(4) Excludes our webstore and seasonal and event-based locations.

(5) Average net retail sales per store represents net retail sales from stores open throughout the entire period divided by the total number of such stores.

(6) When we refer to average net retail sales per store and net retail sales per gross square foot for any period, we include in those calculations only those stores that have been open for that entire period.

(7) Net retail sales per gross square foot represents net retail sales from stores open throughout the entire period divided by the total gross square footage of such stores.

(8) Comparable store sales percentage changes are based on net retail sales and stores are considered comparable beginning in their thirteenth full month of operation.

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

The following Management's Discussion and Analysis of Financial Condition and Results of Operations contains forward-looking statements that involve risks and uncertainties. Our actual results may differ materially from the results discussed in the forward-looking statements. Factors that might cause such a difference include, but are not limited to, those discussed in "Risk Factors" and elsewhere in this annual report on Form 10-K. The following section is qualified in its entirety by the more detailed information,

including our financial statements and the notes thereto, which appears elsewhere in this annual report on Form 10-K.

Overview

We are the leading, and only national, company providing a "make your own stuffed animal" interactive entertainment experience under the Build-A-Bear Workshop brand, in which our guests stuff, fluff, dress, accessorize and name their own teddy bears and other stuffed animals. Our concept, which we developed for mall-based retailing, capitalizes on what we believe is the relatively untapped demand for experience-based shopping as well as the widespread appeal of stuffed animals. The Build-A-Bear Workshop experience appeals to a broad range of age groups and demographics, including children, teens, their parents and grandparents. As of December 31, 2005, we operated 200 stores in 43 states and Canada and had 30 franchised stores operating in international locations under the Build-A-Bear Workshop brand. In addition to our stores, we market our products and build our brand through our website, which simulates our interactive shopping experience, as well as our locations in Major League Baseball® ballparks and our presence at event-based locations through our mobile store.

We operate in three segments that share the same infrastructure, including management, systems, merchandising and marketing, and generate revenues as follows:

- United States and Canadian retail stores, a webstore and seasonal, event-based locations;
- International stores operated under franchise agreements; and
- License arrangements with third parties which manufacture and sell to other retailers merchandise carrying the Build-A-Bear Workshop brand.

Selected financial data attributable to each segment for fiscal 2005, 2004, and 2003 are set forth in note 18 to our consolidated financial statements included elsewhere in this annual report on Form 10-K.

For a discussion of the key trends and uncertainties that have affected our revenues, income and liquidity, see the "Revenues," "Costs and Expenses" and "Expansion and Growth Potential" subsections of this Overview.

We believe that we have developed an appealing retail store concept that, for stores open for the entire year, averaged $1.9 million in fiscal 2005, $1.9 million in fiscal 2004 and $1.6 million in fiscal 2003 in net retail sales per store. For a discussion of the changes in comparable store sales in fiscal years 2005, 2004 and 2003, see "— Revenues." Store contribution, which consists of income before income tax expense, interest, store depreciation and amortization, store preopening expense and general and administrative expense, excluding franchise fees, income from licensing activities and contribution from our webstore and seasonal event-based locations, as a percentage of net retail sales, excluding revenue from our webstore and seasonal and event-based locations, was 26.8% for fiscal 2005 and 26.4% for fiscal 2004, and total company net income as a percentage of total revenues was 7.5% for fiscal 2005 and 6.6% for fiscal 2004. See "— Non-GAAP Financial Measures" for a reconciliation of store contribution to net income. The store contribution of our average store, coupled with the fact that we have opened 163 stores since the beginning of fiscal 2001 and improved expense management, primarily through improved labor planning and reductions in store supply and other expenses in 2004, have been the primary reasons for our net income increasing during each of the last five fiscal years. Strong comparable store sales for fiscal 2004, along with the factors cited above, were the primary reason for our increase in net income in fiscal 2004 as compared to fiscal 2003. Additionally, as we have added stores and grown our sales volume, the quantities of merchandise and supplies we purchase have increased which has created economies of scale for our vendors allowing us to obtain reduced costs for these items and increase our profitability.

The increase in total store contribution has been partially offset by the increase in our central office general and administrative expenses required to support an expanding store base and international franchise operations. These expenses have grown at a slower rate, in percentage terms, than our number of stores and net retail sales. In addition, we significantly increased our advertising expenditures beginning in the fourth quarter of fiscal 2003, and these increased expenditures continued throughout fiscal 2004 and fiscal 2005.

We expect to grow our business primarily through the continued opening of new stores. Further, we expect to grow our net retail sales, including comparable store sales, as a result of the continuation of national television and online advertising which we added to our marketing mix in fiscal 2004. We also plan to increase our revenues through increasing the number of international franchised stores, as well as the addition of new licensees and sales of licensed products for which we receive license revenue.

We expect to realize leverage on our national advertising programs as we expand and open stores in new markets. We have been running national advertising since 2004 and believe that our brand awareness is higher and our entry into new markets is stronger as a result of the advertising and we expect to leverage these programs on an ongoing basis. We expect to improve our store productivity as a result of comparable store sales increases and thereby improve our store contribution as a percentage of net retails sales by better leveraging our store level operating expenses, primarily those which are fixed such as occupancy, over increased net retail sales per store. As we grow our total revenues, we also expect to decrease our general and administrative expenses as a percentage of revenues by leveraging

these expenses, primarily those which are largely fixed such as management payroll and occupancy, over an increased revenue amount. This decrease will be partially offset by some increases in general and administrative expenses, including marketing such as direct mail to support more stores and our growing international franchise business.

Following is a description and discussion of the major components of our statement of operations:

Revenues

Net retail sales. Net retail sales are revenues from retail sales (including our webstore and other non-mall locations), are net of discounts, exclude sales tax, include shipping and handling costs billed to customers, and are recognized at the time of sale. Revenues from gift cards are recognized at the time of redemption. Our guests use cash, checks and third party credit cards to make purchases. We classify stores as new or comparable stores and do not include our webstore or seasonal, event-based locations in our store count or in our comparable store calculations. Stores enter the comparable store calculation in their thirteenth full month of operation. We opened three Friends 2B Made locations in 2005 to bring the total number of Friends 2B Made locations to five as of December 31, 2005. All of these locations are in or adjacent to a Build-A-Bear Workshop store and share common store management, employees and infrastructure. These locations are considered expansions of the existing Build-A-Bear Workshop store and are not considered an addition to our total store count. The net retail sales of these expanded Build-A-Bear Workshop stores are excluded from comparable store sales calculations until the thirteenth full month of operation after the date of the expansion.

We have a frequent shopper program for our U.S. stores whereby guests who purchase $100 of merchandise receive $10 off a future purchase. An estimate of the obligation related to this program, based on historical redemption rates, is recorded as deferred revenue and a reduction of net retail sales at the time of original purchase. The deferred revenue obligation is reduced and a corresponding amount is recognized as net retail sales in the amount of and at the time of redemption of the $10 discount. We account for changes in the deferred revenue amount at the total company level only. This is due to the fact that the frequent buyer discount can be earned or redeemed at any of our store locations. Therefore, when we refer to net retail sales by location, such as comparable stores or new stores, these amounts do not include any changes in the deferred revenue amount.

We use comparable store sales as a key performance measure for our business. The percentage increase (or decrease) in comparable store sales for the periods presented below is as follows:

Fiscal 2005	Fiscal 2004	Fiscal 2003
(0.2)%	18.1%	(15.9)%

Comparable store sales decreased by 0.2% in fiscal 2005 following an increase of 18.1% in fiscal 2004. We believe these changes can be attributed primarily to the following factors:

- Our ongoing programs in advertising. During the fourth quarter of fiscal 2003, we tested in a limited number of markets the use of television and online advertising and determined that it was successful in attracting a higher number of new and repeat guests. In the first quarter of fiscal 2004, we implemented this marketing strategy on a national basis and quickly began achieving comparable store sales increases. We continued this marketing approach throughout fiscal 2005. This approach was successful in maintaining our comparable store sales levels, but did not produce the increases that were achieved in fiscal 2004 when the change in the marketing program was an incremental addition to the prior year.
- Following an improved economy in 2004, with higher levels of consumer confidence and a better retail climate, the economy showed mixed results in 2005 with varying levels of consumer confidence, record levels of crude oil prices and significant weather activity, particularly during the hurricane season.

We believe the decrease in comparable store sales for fiscal 2003 was largely the result of four factors:

- A difficult economic environment, including lower consumer confidence levels and a weak retail climate.
- Our inability to increase the number of transactions in comparable stores which we believe was the result of low brand awareness with potential new and repeat guests.
- The transfer to new stores of a portion of existing stores' sales, as we opened new stores in markets where we already operated one or more stores, causing the existing stores' sales to decline, even though total sales in those markets increased. We expect this factor to continue to affect us as we add new stores in markets where we have existing stores.
- The large amount of initial trial sales in the first year a store is open, which we believe results from the distinctive nature of our concept and the publicity we normally receive when we open a new store, does not necessarily continue at that level after this period. We expect this factor to continue to affect us, but it is difficult to predict to what degree, particularly if awareness of our brand continues to grow as a result of our change in marketing strategy.

Franchise fees: We receive an initial, one-time franchise fee per master franchise agreement which is amortized to revenue over the life of the respective franchise agreement. Master franchise rights are typically granted to a franchisee for an entire country or countries. Continuing franchise fees are based on a percentage of sales made by the franchisees' stores and are recognized as revenue at the time of those sales.

As of December 31, 2005, we had 30 stores, including 18 opened in fiscal 2005, operating under franchise arrangements in the following countries:

United Kingdom	11
Japan	5
Australia	5
Denmark	4
Other	5

On March 3, 2006, we entered into definitive agreements to acquire Amsbra Limited (Amsbra), our franchisee in the United Kingdom, and The Bear Factory Limited, a stuffed animal retailer in the United Kingdom. Amsbra operates all of the franchised Build-A-Bear Workshop stores located in the United Kingdom. The transactions, which are subject to regulatory approval in the United Kingdom, are expected to close late in the first quarter or early in the second quarter of fiscal 2006. If the transactions close, as expected, all of the franchised locations in the United Kingdom will become company owned stores.

Licensing revenue: Licensing revenue is based on a percentage of sales made by licensees to third parties and is recognized at the time of those sales. We have entered into a number of licensing arrangements whereby third parties manufacture and sell to other retailers merchandise carrying the Build-A-Bear Workshop mark.

Costs and Expenses

Cost of merchandise sold and gross margin: Cost of merchandise sold includes the cost of the merchandise, royalties paid to licensors of third party branded merchandise, store occupancy cost, including store depreciation, freight costs from the manufacturer to the store, cost of warehousing and distribution, packaging, damages and shortages, and shipping and handling costs incurred in shipment to customers. Gross margin is defined as net retail sales less the cost of merchandise sold.

We have been able to reduce the unit costs of our merchandise and packaging through economies of scale realized as our sales volume has grown. The increase in sales volume has also allowed us to reduce our freight, cost of warehousing and distribution costs as a percentage of net retail sales as a result of the cost efficiencies of shipping higher volumes of merchandise. We expect to maintain these efficiencies in the future.

Selling, general and administrative expense: These expenses include store payroll and benefits, advertising, credit card fees, and store supplies, as well as central office general and administrative expenses, including management payroll, benefits, travel, information systems, accounting, insurance, legal and public relations. This line item also includes depreciation and amortization of central office leasehold improvements, furniture, fixtures and equipment as well as the amortization of intellectual property costs.

Central office general and administrative expenses have grown over time in order to support the increased number of stores in operation and we believe will continue to grow as we add stores, but we expect this increase to be at a lower rate than the percentage increase in total revenues. Advertising increased significantly with the introduction in fiscal 2004 of our national television and online advertising campaign. We maintained the level of advertising expense as a percentage of net retail sales in fiscal 2005 as compared to fiscal 2004, and anticipate continuing this level of advertising expenditures in the future. Increases in comparable store sales results in fiscal 2004 as well as improvements in store labor planning in the latter half of fiscal 2003 have resulted in lower store payroll as a percentage of net retail sales in fiscal 2004 as compared to fiscal 2003. We maintained the lower level of store payroll as a percentage of sales in fiscal 2005, and anticipate maintaining that level in the future. Other store expenses such as credit card fees and supplies historically have increased or decreased proportionately with net retail sales.

We granted options during fiscal 2004 at an exercise price of $8.78 per share, which had been determined to be the fair value of our common stock at the time based on an independent appraisal. Subsequent to such grants, we determined that the fair value of the underlying common stock should have been deemed to be approximately $15.00 per share. As a result of this determination, this option issuance generated stock-based compensation of $1.9 million to be recognized over the vesting period of the 302,234 underlying options issued. These options became fully vested upon the completion of our initial public offering on October 28, 2004. Accordingly, all unrecognized compensation expense related to this grant was recognized at that time and is reflected in the consolidated statement of operations for fiscal 2004 as a component of selling, general and administrative expense.

On January 1, 2006, we plan to adopt the provisions of Statement of Financial Accounting Standards (SFAS) No. 123 (revised

2004), *Share-Based Payment* (SFAS 123R). The provisions of SFAS 123R require that all share-based payments to employees be recognized in the financial statements based on the fair value of the instruments issued. SFAS 123R requires the recognition of compensation expense related to instruments issued following adoption as well as to the non-vested portion of instruments issued prior to adoption of the standard. After the adoption of SFAS 123R, we anticipate that our share-based employee compensation will primarily consist of the granting of non-vested stock which vests over a pre-determined period of time assuming continued employment. In the past, our share-based employee compensation consisted primarily of stock option awards which vested over a pre-determined period of time assuming continued employment. We expect to report stock-based compensation of approximately $2.7 million ($1.7 million net of taxes), in fiscal 2006 following the adoption of SFAS 123R.

On October 21, 2005, we accelerated the vesting of all unvested stock options which were granted prior to March 9, 2005. These options have exercise prices ranging from $20.00 to $34.65 per share**.** Options to purchase 174,056 shares of our stock became exercisable on October 21, 2005 as a result of this acceleration, including 71,000 shares held by our named executive officers. Of these options, 173,056 had exercise prices in excess of the current market value at the time of the acceleration of vesting.

Our decision to accelerate the vesting of the accelerated options was based upon the issuance by the Financial Accounting Standards Board of SFAS 123R, which will require us to record compensation expense for unvested stock options effective January 1, 2006. The acceleration of the vesting of these stock options will enable us to avoid compensation charges related to these options in subsequent periods under the provisions of SFAS 123R. In addition, we considered that because the vast majority of these options had exercise prices in excess of the current market value, they were not fully achieving their original objectives of incentive compensation and employee retention. Accordingly, we believed that the acceleration would have a positive effect on employee morale.

The aggregate compensation expense that would have been recorded subsequent to the adoption of SFAS 123R, but was eliminated as a result of the acceleration of the vesting of these options, was approximately $1.8 million ($1.1 million net of tax). This amount is instead reflected in the pro forma footnote disclosures set forth in note 2(t) to our consolidated financial statements included elsewhere in this annual report on Form 10-K.

Store preopening: Preopening costs are expensed as incurred and include store set-up, certain labor and hiring costs, and rental charges incurred prior to a store's opening.

Impairment charge (credit): This includes the provision to write down to estimated net realizable value the long-lived assets of any store for which we have determined the carrying value will not be recovered through cash flows from future operations. The credit relates to the reversal of certain store closing costs following the decision to continue operations at a location previously designated for closure.

Expansion and Growth Potential

U.S. and Canadian Stores:

The number of Build-A-Bear Workshop stores in the United States and Canada for the last three fiscal years can be summarized as follows:

	Fiscal 2005	Fiscal 2004	Fiscal 2003
Beginning of period	170	150	108
Opened	30	21	43
Closed	—	(1)	(1)
End of period	200	170	150

In fiscal 2006, we anticipate opening approximately 30 Build-A-Bear Workshop stores in the United States and Canada. We believe there is a market potential for approximately 350 Build-A-Bear Workshop stores in the United States and Canada. In fiscal 2003, we began testing in certain markets our initial brand expansion initiative, our proprietary "Friends 2B Made" line of make-your-own dolls and related products. In fiscal 2004, we opened two Friends 2B Made locations in or adjacent to existing Build-A-Bear Workshop stores. In fiscal 2005, we opened three additional locations in or adjacent to new or existing Build-A-Bear Workshop stores. These Friends 2B Made stores are not included in the number of store openings in fiscal 2005 or 2004 as noted above but rather are considered expansions of Build-A-Bear Workshop stores. The Friends 2B Made merchandise is also offered from a separate display fixture in select Build-A-Bear Workshop stores.

Non-Store Locations:

In 2004 we began offering merchandise in seasonal, event-based locations such as Citizens Bank Park™, home of the Philadelphia Phillies™ baseball club, as well as at temporary locations such as at the NBA All-Star Jam Session. We expect to expand our future presence at select seasonal, event-based locations contingent on their availability. In fiscal 2005, we opened two additional event-based locations in baseball ballparks, and we plan to open two additional locations in baseball ballparks in fiscal 2006. We also plan to open our first store within a zoo during fiscal 2006.

International Franchise Revenue:

Our first franchisee location was opened in November 2003. The number of international, franchised stores opened and closed since that time can be summarized as follows:

	Fiscal 2005	Fiscal 2004	Fiscal 2003
Beginning of period	12	1	–
Opened	18	12	1
Closed	–	(1)	–
End of period	30	12	1

As of December 31, 2005, we had master franchise agreements, which typically grant franchise rights for a particular country or countries, with nine franchisees covering thirteen countries. We anticipate signing additional master franchise agreements in the future. We expect our current and future franchisees to open approximately 20 stores in fiscal 2006. We believe there is a market potential for approximately 350 franchised stores outside of the United States and Canada.

On March 3, 2006, we entered into definitive agreements to acquire Amsbra Limited (Amsbra), our franchisee in the United Kingdom, and The Bear Factory Limited, a stuffed animal retailer in the United Kingdom. Amsbra owns all of the franchised Build-A-Bear Workshop stores located in the United Kingdom. The transactions, which are subject to regulatory approval in the United Kingdom, are expected to close late in the first quarter or early in the second quarter of fiscal 2006. If the transactions close, as expected, all of the franchised locations in the United Kingdom will become company owned stores. Eleven of the 30 franchised locations as of December 31, 2005 were operated by Amsbra.

Licensing Revenue:

In fiscal 2004, we began entering into license agreements pursuant to which we receive royalties on Build-A-Bear Workshop brand products. These agreements generated revenue of approximately $0.9 million in fiscal 2005. We anticipate entering into additional license agreements in the future.

Results of Operations

The following table sets forth, for the periods indicated, selected statement of operation data expressed as a percentage of total revenues, except where otherwise indicated. Percentages will not total due to cost of merchandise sold being expressed as a percentage of net retail sales and rounding:

	Fiscal 2005	Fiscal 2004	Fiscal 2003
Revenues:			
Net retail sales	99.2%	99.6%	99.9%
Franchise fees	0.5	0.3	0.1
Licensing revenues	0.3	0.1	0.0
Total revenues	100.0	100.0	100.0
Costs and expenses:			
Cost of merchandise sold (1)	50.3	50.2	54.3
Selling, general and administrative	37.0	38.5	38.2
Store preopening	1.3	0.7	1.8
Impairment charge (credit)	0.0	(0.0)	0.0
Interest expense (income), net	(0.5)	(0.1)	(0.0)
Total costs and expenses	87.7	89.1	94.2
Income before income taxes	12.3	10.9	5.8
Income tax expense	4.7	4.3	2.3
Net income	7.5%	6.6%	3.6%
Gross margin (%)(2)	49.7%	49.8%	45.7%

(1) Cost of merchandise sold is expressed as a percentage of net retail sales.

(2) Gross margin represents net retail sales less cost of merchandise sold. Gross margin percentage represents gross margin divided by net retail sales.

Fiscal Year Ended December 31, 2005 (52 weeks) Compared to Fiscal Year Ended January 1, 2005 (52 weeks)

Total revenues. Net retail sales increased to $358.9 million for fiscal 2005 from $300.5 million for fiscal 2004, an increase of $58.4 million, or 19.4%. Sales from new stores contributed a $54.8 million increase in net retail sales. Sales over the Internet increased by $2.4 million, or 38.8%, and sales from non-store locations and non-comparable stores resulted in a $0.7 million increase in net retail sales. Comparable store sales decreased $0.5 million, or 0.2%. Revenue deferrals under our frequent shopper program decreased to $1.6 million in fiscal 2005 compared to $2.6 million in fiscal 2004 and resulted in a $1.0 million increase in net retail sales.

Revenue from international franchise fees increased to $2.0 million for fiscal 2005 from $0.8 million for fiscal 2004, an increase of $1.2 million. This increase was primarily due to the addition of new franchisees and new franchised stores in fiscal 2005. Licensing revenue was $0.9 million in fiscal 2005 compared to $0.3 million in fiscal 2004.

Gross margin. Gross margin increased to $178.5 million for fiscal 2005 from $149.6 million for fiscal 2004, an increase of $28.9 million, or 19.3%. As a percentage of net retail sales, gross margin decreased to 49.7% for fiscal 2005 from 49.8% for fiscal 2004, a decrease of 0.1%. Higher shipping costs related to increased fuel surcharges accounted for 0.3% of the decrease in gross margin. Higher occupancy cost as a percentage of net retail sales, resulting from flat comparable store sales, accounted for 0.2% of this decrease. These decreases were partially offset by lower product and supply costs, as a percentage of net retail sales, resulting from purchasing cost efficiencies related to higher sales volumes, which accounted for a 0.3% increase in gross margin. Reduced inventory damages and shortages also offset the decrease in gross margin by 0.1%.

Selling, general and administrative. Selling, general and administrative expenses were $133.9 million for fiscal 2005 as compared to $116.0 million for fiscal 2004, an increase of $17.9 million, or 15.4%. As a percentage of total revenues, selling, general and administrative expenses decreased to 37.0% for fiscal 2005 as compared to 38.5% for fiscal 2004, a decrease of 1.5%. The dollar increase was primarily due to 30 more stores in operation at December 31, 2005 as compared to January 1, 2005. Selling, general and administrative expense as a percentage of total revenues was 1.5% lower due to the leveraging of central office and store payroll costs, primarily as a result of lower performance-based bonuses in 2005 as compared to 2004. Lower stock-based compensation also decreased selling, general and administrative expenses by 0.4% as a percentage of total revenues. These decreases were partially offset by higher legal, accounting and insurance costs primarily associated with being a public company for the entire period in fiscal 2005 which resulted in a 0.4% increase as a percentage of total revenues.

Store preopening. Store preopening expense was $4.8 million for fiscal 2005 as compared to $2.2 million for fiscal 2004. These amounts include preopening rent expense of $1.5 million in fiscal 2005 and $0.4 million in fiscal 2004. Approximately $2.0 million of this increase, including approximately $0.9 million of preopening rent expense, was due to the preopening costs related to our flagship store and café in New York City. Excluding our flagship store, eight more new stores were opened in fiscal 2005 than in fiscal 2004 (29 in fiscal 2005 as compared to 21 in fiscal 2004). Preopening expenses include expenses for stores that have opened as well as some expenses incurred for stores that will be opened at a later date.

Interest expense (income), net. Interest income, net of interest expense, was $1.7 million for fiscal 2005 as compared to $0.3 million for fiscal 2004. This increase was the result of higher cash balances throughout fiscal 2005.

Provision for income taxes. The provision for income taxes was $17.1 million for fiscal 2005 as compared to $12.9 million for fiscal 2004. The effective tax rate was 38.5% for fiscal 2005 and 39.3% for fiscal 2004. The decrease in the effective tax rate was principally due to non-deductible stock compensation charges incurred in fiscal 2004.

Fiscal Year Ended January 1, 2005 (52 weeks) Compared to Fiscal Year Ended January 3, 2004 (53 weeks)

Total revenues. Net retail sales increased to $300.5 million for fiscal 2004 from $213.4 million for fiscal 2003, an increase of $87.1 million, or 40.8%. Net retail sales for new stores as well as our webstore and other non-store locations contributed a $61.0 million increase in net retail sales. Comparable store sales increased $35.3 million, or 18.1%, which we believe was primarily the result of our national multi-media marketing program along with our enhanced merchandising initiatives and an improved economy. We also believe the results include the positive impact of being featured in one segment of a nationally syndicated television show in the first quarter of fiscal 2004. These increases in net retail sales were partially offset by additional revenue deferrals under our frequent shopper program of $2.6 million and net decreases from non-comparable store locations (either closed or expanded) of $0.7 million. Fiscal 2004 had one less week than fiscal 2003 (which was a 53 week year) and net retail sales in the extra, non-comparable week of 2003 were $5.9 million.

Revenue from franchise fees increased to $0.8 million for fiscal 2004 from $0.2 million for fiscal 2003, an increase of $0.6 million. This increase was primarily due to the addition of new franchisees and new franchised stores in fiscal 2004. Licensing revenue was $0.3 million in fiscal 2004. There was no licensing revenue in fiscal 2003.

Gross margin. Gross margin increased to $149.6 million for fiscal 2004 from $97.6 million for fiscal 2003, an increase of $52.0 million, or 53.3%. As a percentage of net retail sales, gross margin increased to 49.8% for fiscal 2004 from 45.7% for fiscal 2003, an increase of 4.1%. Lower occupancy cost as a percentage of net retail sales, resulting from strong comparable store sales increases, accounted for 2.8% of this increase. Lower product, supplies, warehousing and distribution costs, as a percentage of net retail sales, resulting from purchasing cost efficiencies related to higher sales volumes, accounted for 1.1% of the increase in gross margin. Reduced royalties to third parties for our licensed merchandise accounted for another 0.2% of the increase in gross margin.

Selling, general and administrative. Selling, general and administrative expenses were $116.0 million for fiscal 2004 as compared to $81.5 million for fiscal 2003, an increase of $34.5 million, or 42.3%. As a percentage of total revenues, selling, general and administrative expenses increased to 38.5% for fiscal 2004 as compared to 38.2% for fiscal 2003, an increase of 0.3%. The dollar increase was primarily due to 20 more stores in operation at January 1, 2005 as compared to January 3, 2004 as well as higher central office expenses, primarily performance-based bonus increases of $4.5 million over fiscal 2003, and $12.6 million in additional advertising expense related to the national television and online marketing campaign which began in fiscal 2004. Selling, general and administrative expenses as a percentage of total revenues were 2.8% higher in 2004 as compared to 2003 as a result of the higher advertising expense, 1.4 % higher as a result of performance-based bonuses, and 0.6% higher as a result of stock-based compensation. These increases were partially offset by leveraging store payroll and other store supplies and expenses in comparable stores against increased sales at these locations which accounted for a 1.9% decrease. Additionally, leveraging central office general and administrative expenses over higher revenues accounted for a 2.6% decrease in selling, general and administrative expenses as a percentage of total revenues.

Store preopening. Store preopening expense was $2.2 million for fiscal 2004 as compared to $3.9 million for fiscal 2003. Twenty-two fewer new stores were opened in fiscal 2004 than in fiscal 2003 (21 in fiscal 2004 as compared to 43 in fiscal 2003). Preopening expenses include expenses for stores that have opened as well as some expenses incurred for stores that will be opened at a later date.

Interest expense (income), net. Interest income, net of interest expense, was $0.3 million for fiscal 2004 as compared to $0.1 million for fiscal 2003. This increase was the result of higher cash balances during the latter half of 2004.

Provision for income taxes. The provision for income taxes was $12.9 million for fiscal 2004 as compared to $4.9 million for fiscal 2003. The effective tax rate was 39.3% for fiscal 2004 and 39.0% for fiscal 2003. The increase in the effective tax rate was principally due to non-deductible stock compensation charges incurred in fiscal 2004.

Non-GAAP Financial Measures

We use the term “store contribution” throughout this annual report on Form 10-K. Store contribution consists of income before income tax expense, interest, store depreciation and amortization, store preopening expense and general and administrative expense, excluding franchise fees, income from licensing activities and contribution from our webstore and seasonal and event-based locations. This term, as we define it, may not be comparable to similarly titled measures used by other companies and is not a measure of performance presented in accordance with U.S. generally accepted accounting principles (GAAP).

We use store contribution as a measure of our stores’ operating performance. Store contribution should not be considered a substitute for net income, net income per store, cash flows provided by operating activities, cash flows provided by operating activities per store, or other income or cash flow data prepared in accordance with GAAP.

We believe store contribution is useful to investors in evaluating our operating performance because it, along with the number of stores in operation, directly impacts our profitability. Historically, central office general and administrative expenses and preopening expenses have increased at a rate less than our total net retail sales increases. Therefore, as we have opened additional new stores and leveraged our central office general and administrative and preopening expenses over this larger store base and sales volume, we have been able to increase our net income each year.

The following table sets forth a reconciliation of store contribution to net income:

	Fiscal 2005	Fiscal 2004
	(Dollars in thousands)	
Net income	$ 27,314	$ 19,999
Income tax expense	17,099	12,934
Interest expense (income)	(1,710)	(299)
Store depreciation and amortization(1)	13,985	11,713
Store preopening expense	4,812	2,186
General and administrative expense(2)	34,000	31,952
Franchising and licensing contribution(3)	(1,107)	353
Non-store activity contribution(4)	(1,499)	(1,923)
Store contribution	$ 92,894	$ 76,915
Total revenues	$ 361,809	$ 301,662
Franchising and licensing revenues	(2,907)	(1.193)
Revenues from non-store activities(4)	$ (12,131)	$ (8,964)
Store location net retail sales	$ 346,771	$ 291,505
Store contribution as a percentage of store location net retail sales	26.8%	26.4%
Total net income as a percentage of total revenues	7.5%	6.6%

(1) Store depreciation and amortization includes depreciation and amortization of all capitalized assets in store locations, including leasehold improvements, furniture and fixtures, and computer hardware and software.

(2) General and administrative expenses consist of non-store, central office general and administrative functions such as management payroll and related benefits, travel, information systems, accounting, purchasing and legal costs as well as the depreciation and amortization of central office leasehold improvements, furniture and fixtures, computer hardware and software and intellectual property. General and administrative expenses also include a central office marketing department, primarily payroll and related benefits expense, but exclude advertising expenses, such as direct mail catalogs and television advertising, which are included in store contribution.

(3) Franchising and licensing contribution includes franchising and licensing revenues and all expenses attributable to the franchising and licensing segments other than depreciation, amortization and interest expense/income. Depreciation and amortization related to franchising and licensing is included in the general and administrative expense caption. Interest expense/income related to franchising and licensing is included in the interest expense (income) caption.

(4) Non-store activities include our webstore, seasonal and event-based locations and franchising and licensing activities.

Seasonality and Quarterly Results

The following is a summary of certain unaudited quarterly results of operations data for each of the last two fiscal years.

	Fiscal 2005				Fiscal 2004			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	First Quarter(1)	Second Quarter	Third Quarter	Fourth Quarter
	(Dollars in millions, except per share data)							
Total revenues	$86.1	$73.7	$84.0	$118.0	$69.6	$66.1	$66.5	$99.5
Gross margin(2)	43.3	34.5	40.0	60.8	33.7	32.0	31.5	52.3
Net income	8.0	3.5	5.3	10.6	5.3	4.9	3.5	6.3
Net income allocated to common stockholders	8.0	3.5	5.3	10.6	0.1	0.2	0.1	6.2
Earnings per common share:								
Basic	0.41	0.18	0.26	0.53	0.48	0.44	0.34	0.45
Diluted	0.40	0.17	0.26	0.52	0.30	0.27	0.19	0.32
Number of stores (end of quarter)	173	186	193	200	151	157	164	170

(1) The results of this quarter include what we believe is the positive impact of being featured in one segment of a nationally syndicated television show.

(2) Gross margin represents net retail sales less cost of merchandise sold. Amounts presented in the above table are different than those previously presented on Form 10-Q due to certain reclassifications made to comply with the current period presentation.

Our operating results for one period may not be indicative of results for other periods, and may fluctuate significantly because of a variety of factors, including those discussed under "Risk Factors — Fluctuations in our quarterly results of operations could cause the price of our common stock to substantially decline."

The timing of new store openings may result in fluctuations in quarterly results as a result of the revenues and expenses associated with each new store location. We typically incur most preopening costs for a new store in the three months immediately preceding the store's opening. We expect our growth, operating results and profitability to depend in some degree on our ability to increase our number of stores.

Historically, for stores open more than twelve months, seasonality has not been a significant factor in our results of operations, although we cannot assure you that this will continue to be the case. In addition, for accounting purposes, the quarters of each fiscal year consist of 13 weeks, although we will have a 14-week quarter approximately once every six years, including the quarter ended January 3, 2004. Quarterly fluctuations and seasonality may cause our operating results to fall below the expectations of securities analysts and investors, which could cause our stock price to fall.

Liquidity and Capital Resources

Our cash requirements are primarily for the opening of new stores, information systems and working capital. Historically, we have met these requirements through capital generated from the sale and issuance of our securities to private investors and through our initial public offering, cash flow provided by operations and our revolving line of credit. From our inception to December 2001, we raised at various times a total of $44.9 million in capital from several private investors. In 2004, we raised $25.7 million from the initial public offering of our common stock. Since fiscal 2002, cash flows provided by operating activities have exceeded cash flows used in investing activities.

Operating Activities. Cash flows provided by operating activities were $54.6 million in fiscal 2005, $48.5 million in fiscal 2004 and $31.8 million in fiscal 2003. Cash flow from operating activities increased each period primarily due to increases in net income adjusted for the impact of depreciation and amortization. Changes in assets and liabilities, excluding cash, provided cash of $7.4 million in fiscal 2005, $12.5 million in fiscal 2004, and $9.4 million in fiscal 2003. The increases in operating cash flows for changes in assets and liabilities, excluding cash, for the fiscal years 2003 through 2005 were primarily due to increases in gift cards, due to the significant sale of gift cards in December each year; increases in accounts payable and accrued expenses due to the growth of the number of stores in operation at each year-end and higher accruals for corporate bonuses at the end of fiscal 2004; and increases in the deferred revenue and deferred rent balances due to growth in net retail sales and the number of stores in operation, respectively. Tax benefits from stock option exercises also provided operating cash flows of $3.1 million in fiscal 2005, compared to $0.4 million in fiscal 2004. There were no tax benefits from stock option exercises in fiscal 2003. The increases in operating cash flow for the above reasons were partially offset by increases in inventory due to the growth of the number of stores in operation. We require an increase in working capital, specifically inventory, during the year. Inventory typically peaks during the third and fourth quarters of each year due to the strong selling periods of summer and the month of December.

Investing Activities. Cash flows used in investing activities were $37.1 million in fiscal 2005, $17.7 million in fiscal 2004 and $27.0 million in fiscal 2003. Cash used in investing activities relates primarily to 30 new stores opened in fiscal 2005, 21 in fiscal 2004, and 43 in fiscal 2003. In fiscal 2005, a loan made to one of our franchisees used cash of $4.4 million. No loans were made in fiscal 2004 or fiscal 2003. The costs of registering our intellectual property rights and certain costs related to the designing and leasing of stores were $1.6 million in fiscal 2005, $1.2 million in fiscal 2004 and $1.9 million in fiscal 2003.

Financing Activities. Cash flows provided by financing activities were $6.1 million in fiscal 2005, $15.9 million in fiscal 2004, and none in fiscal 2003. In fiscal 2005, exercises of employee stock options and employee stock purchases provided cash of $4.4 million, as compared to $0.1 million in fiscal 2004 and none in fiscal 2003. The collection of a note receivable from an officer of the Company provided cash of $1.6 million in fiscal 2005. A similar note collection in fiscal 2004 provided cash of $0.1 million. There were no note collections in fiscal 2003. In fiscal 2004, we completed our initial public offering which resulted in cash inflows, net of offering costs, of $25.7 million. The financing cash inflows from the initial public offering were partially offset by the payment of a special cash dividend in August 2004 of $10.0 million. Maximum borrowings under our line of credit were $3.3 million in fiscal 2003. No borrowings were made under our line of credit in fiscal 2005 or 2004.

Capital Resources. As of December 31, 2005, we had a cash balance of $91.0 million. We also have a $15.0 million line of credit, which we can use to finance capital expenditures and seasonal working capital needs throughout the year. The credit agreement is with U.S. Bank, National Association. Borrowings under the credit agreement are not collateralized, but availability under the credit

agreement can be limited by the lender based on our level of accounts receivable, inventory, and property and equipment. The credit agreement expires on September 30, 2007 and contains various restrictions on indebtedness, liens, guarantees, redemptions, mergers, acquisitions or sale of assets, loans, transactions with affiliates, and investments. It also prohibits us from declaring dividends without the bank's prior consent, unless such payment of dividends would not violate any terms of the loan agreement. Borrowings bear interest at the prime rate less 0.5%. Financial covenants include maintaining a minimum tangible net worth, maintaining a minimum fixed charge coverage ratio (as defined in the credit agreement) and not exceeding a maximum funded debt to earnings before interest, depreciation and amortization ratio. As of December 31, 2005, we were in compliance with these covenants. There were no borrowings under our line of credit as of December 31, 2005. There was a standby letter of credit of approximately $1.1 million outstanding under the credit agreement as of December 31, 2005. Accordingly, there was approximately $13.9 million available for borrowing under the line of credit as of December 31, 2005.

Most of our retail stores are located within shopping malls and all are operated under leases classified as operating leases. These leases typically have a ten year term and contain provisions for base rent plus percentage rent based on defined sales levels. Many of the leases contain a provision whereby either we or the landlord may terminate the lease after a certain time, typically in the third to fourth year of the lease, if a certain minimum sales volume is not achieved. In addition, some of these leases contain various restrictions relating to change of control of our company. Our leases also subject us to risks relating to compliance with changing mall rules and the exercise of discretion by our landlords on various matters, including rights of termination in some cases.

In fiscal 2006, we expect to spend a total of approximately $47 million to $52 million on capital expenditures, primarily for the construction of a new distribution center and the opening of approximately 30 new stores. This amount also includes projected capital expenditures for the continued installation and upgrades of central office information technology systems. In fiscal 2005, the average investment per new store, which includes leasehold improvements, fixtures, equipment and inventory, was approximately $0.6 million. We anticipate the investment per store in fiscal 2006 will be approximately the same. The capital investment in our new distribution center is expected to be approximately $22 million in fiscal 2006.

On March 3, 2006, we entered into definitive agreements to purchase all of the outstanding shares of The Bear Factory Limited, a stuffed animal retailer in the United Kingdom, and Amsbra Limited, our U.K. franchisee. The total cash purchase price of the two entities is approximately $41.4 million, exclusive of the professional fees incurred as a part of the transaction. Included within the approximate purchase price is the forgiveness of the $4.4 million note receivable from Amsbra and all related accrued interest. The transactions are subject to U.K. regulatory approval, and are expected to close late in the first quarter or early in the second quarter of fiscal 2006. We expect to spend an additional $10 million to $15 million on capital expenditures related to store re-branding and the opening of new stores in the U.K. in fiscal 2006.

We believe that cash generated from operations and borrowings under our credit agreement will be sufficient to fund our working capital and other cash flow requirements for at least the next 18 months. However, there is a possibility that the Company may need to seek additional financing to cover seasonal working capital needs, and it is possible that the needed financing will not be available at acceptable rates. Our current credit agreement expires on September 30, 2007.

Off-Balance Sheet Arrangements

We do not have any arrangements classified as off-balance sheet arrangements.

Contractual Obligations and Commercial Commitments

Our contractual obligations and commercial commitments include future minimum obligations under operating leases and purchase obligations. Our purchase obligations primarily consist of purchase orders for merchandise inventory, construction commitments related to our new distribution center and obligations associated with building out our stores. The future minimum payments for these obligations as of December 31, 2005 for periods subsequent to this date are as follows:

	Payments Due by Fiscal Period as of December 31, 2005						
	Total	2006	2007	2008	2009	2010	Beyond
				(In thousands)			
Operating lease obligations	204,793	26,720	27,648	28,070	27,411	25,888	69,056
Purchase obligations	47,934	47,604	258	70	2	—	—
Total	$252,727	$74,324	$27,906	$28,140	$27,413	$25,888	$69,056

Inflation

We do not believe that inflation has had a material adverse impact on our business or operating results during the periods presented. We cannot assure you, however, that our business will not be affected by inflation in the future.

Critical Accounting Policies

The preparation of financial statements in conformity with generally accepted accounting principles requires the appropriate application of certain accounting policies, many of which require us to make estimates and assumptions about future events and their impact on amounts reported in our financial statements and related notes. Since future events and their impact cannot be determined with certainty, the actual results will inevitably differ from our estimates. Such differences could be material to the financial statements.

We believe application of accounting policies, and the estimates inherently required therein, are reasonable. These accounting policies and estimates are periodically reevaluated, and adjustments are made when facts and circumstances dictate a change. Historically, we have found our application of accounting policies to be appropriate, and actual results have not differed materially from those determined using necessary estimates.

Our accounting policies are more fully described in note 2 to our consolidated financial statements, which appear elsewhere in this annual report on Form 10-K. We have identified certain critical accounting policies which are described below.

Inventory

Inventory is stated at the lower of cost or market, with cost determined on an average cost basis. Historically, we have not conducted sales whereby we offer significant discounts or markdowns, nor have we experienced significant occurrences of obsolete or slow moving inventory. However, future changes in circumstances, such as changes in guest merchandise preference, could cause reclassification of inventory as obsolete or slow-moving inventory. The effect of this reclassification would be the recording of a reduction in the value of inventory to realizable values.

Throughout the year we record an estimated cost of shortage based on past historical results. Periodic physical inventories are taken and any difference between the actual physical count of merchandise and the recorded amount in our records are adjusted and recorded as shortage. Historically, the timing of the physical inventory has been near the end of the fiscal year so that no material amount of shortage was required to be estimated on activity between the date of the physical count and year-end. However, future physical counts of merchandise may not be at times at or near the end of a fiscal quarter or fiscal year-end, and our estimate of shortage for the intervening period may be material based on the amount of time between the date of the physical inventory and the date of the fiscal quarter or year-end.

Long-Lived Assets

If facts and circumstances indicate that a long-lived asset, including property and equipment, may be impaired, the carrying value is reviewed. If this review indicates that the carrying value of the asset will not be recovered as determined based on projected undiscounted cash flows related to the asset over its remaining life, the carrying value of the asset is reduced to its estimated fair value. No long-lived assets were impaired in fiscal 2005, 2004, or 2003. In fiscal 2004, we determined that one store which had been designated for closure would remain open. This determination resulted in the reversal of $0.1 million in impairment charges taken in fiscal 2001 for costs to be incurred upon the closing of the store. Impairment losses in the future are dependent on a number of factors such as site selection and general economic trends, and thus could be significantly different than historical results. To the extent our estimates for net sales, gross profit and store expenses are not realized, future assessments of recoverability could result in additional impairment charges.

Revenue Recognition

Revenues from retail sales, net of discounts and excluding sales tax, are recognized at the time of sale. Guest returns have not been significant. Revenues from gift certificates are recognized at the time of redemption. Unredeemed gift cards are included in current liabilities on the consolidated balance sheets.

We have a frequent shopper program whereby guests who purchase approximately $100 of merchandise receive $10 off a future purchase. An estimate of the obligation related to the program, based on historical redemption rates, is recorded as deferred revenue and a reduction of net retail sales at the time of purchase. The deferred revenue obligation is reduced, and a corresponding amount is recognized in net retail sales, in the amount of and at the time of redemption of the $10 discount.

We evaluate the ultimate redemption rate under this program through the use of frequent shopper cards which have an expiration date after which the frequent purchase discount would not have to be honored. The initial card had no expiration date but has not been provided to our guests since May 2002. Beginning in June 2002, and continuing each summer thereafter, a new series of cards was issued that had an expiration date of December 31 of the year following the year in which that series of cards was first issued. We track redemptions of these various cards and use actual redemption rates by card series and historical results to estimate how much revenue to defer. We review these redemption rates and assess the adequacy of the deferred revenue account at the end of each fiscal quarter. Due to the estimates involved in these assessments, adjustments to the deferral rate are generally made no more often than bi-annually in order to allow time for more definite trends to emerge. Based on this assessment at the end of fiscal 2003, the deferred revenue account was adjusted downward by $1.1 million with a corresponding increase to net sales. Additionally, the amount of revenue being deferred beginning in fiscal 2004 was decreased by 0.2%, and by another 0.5% beginning with the third quarter of fiscal 2004, to give effect to the change in redemption experience. The changes made to the deferral rate in 2004 were prospective in nature with no impact on previously reported results of operations. Beginning with the second quarter of fiscal 2005, the amount of revenue being deferred was reduced by 0.1% on a prospective basis from its then current level due to further changes in the Company's redemption experience. A 0.1% adjustment of the ultimate redemption rate at the end of fiscal 2005 for the current cards expiring on December 31, 2005 and December 31, 2006 would have an approximate impact of $0.5 million on the deferred revenue balance and net retail sales.

Recent Accounting Pronouncements

In December 2004, the Financial Account Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 123 (revised 2004), *Share-Based Payment* (SFAS 123R), which replaces SFAS No. 123, *Accounting for Stock-Based Compensation*, (SFAS 123) and supersedes Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees* (APB 25). SFAS 123R eliminates the intrinsic value method under APB 25 as an alternative method of accounting for stock-based awards. SFAS 123R also revises the fair value-based method of accounting for share-based payment liabilities, forfeitures and modifications of stock-based awards and clarifies SFAS 123's guidance in several areas, including measuring fair value, classifying an award as equity or as a liability and attributing compensation cost to reporting periods. In addition, SFAS 123R amends SFAS No. 95, *Statement of Cash Flows*, to require that excess tax benefits be reported as a financing cash inflow rather than as a reduction of taxes paid, which is included within operating cash flows. SFAS 123R, as amended by a ruling issued by the Securities and Exchange Commission on April 14, 2005, requires all share-based payments to employees, including grants of employee stock options and stock purchases under certain employee stock purchase plans, to be recognized in the financial statements based on their fair values beginning with the first annual reporting period that begins after June 15, 2005, with early adoption encouraged. We plan to adopt SFAS 123R effective January 1, 2006 using the modified prospective method. We expect to report stock-based compensation expense of approximately $1.7 million, net of taxes, in fiscal 2006 following the adoption of SFAS 123R.

In May 2005, the FASB issued SFAS No. 154, *Accounting Changes and Error Corrections, a replacement of APB Opinion No. 20, Accounting Changes and FASB Statement No. 3, Reporting Accounting Changes in Interim Financial Statements* (SFAS 154). SFAS 154 provides guidance on the accounting for and reporting of accounting changes and error corrections. It establishes, unless impracticable, retrospective application as the required method for reporting a change in accounting principle in the absence of explicit transition requirements specific to the newly adopted accounting principle. SFAS 154 also provides guidance for determining whether retrospective application of a change in accounting principle is impracticable and for reporting a change when retrospective application is impracticable. The provisions of this Statement are effective for accounting changes and corrections of errors made in fiscal periods beginning after December 15, 2005. The adoption of the provisions of SFAS 154 is not expected to have a material impact on our financial position or results of operations.

On October 6, 2005, the FASB issued FASB Staff Position ("FSP") No. FAS 13-1, *Accounting for Rental Costs Incurred during a Construction Period*. The FASB has concluded that rental costs incurred during and after a construction period are for the right to control the use of a leased asset and must be recognized as rental expense. Our current accounting policies are in compliance with the conclusion reached in FSP No. FAS 13-1. The FSP is effective for reporting periods beginning after December 15, 2005. The adoption of the provisions of FSP No. FAS 13-1 is not expected to have a material impact on our financial position or results of operations.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our market risks relate primarily to changes in interest rates, and we bear this risk in two specific ways. First, our revolving credit facility carries a variable interest rate that is tied to market indices and, therefore, our results of operations and our cash flows can be impacted by changes in interest rates. As of December 31, 2005, we had no borrowings. Outstanding balances under our credit facility bear interest at a rate of prime less 0.5%. We had no borrowings outstanding during fiscal 2005. Accordingly, a 100 basis point change in interest rates would result in no material change to our annual interest expense. The second component of interest rate risk involves the short term investment of excess cash in short term, investment grade interest-bearing securities. These investments are considered to be cash equivalents and are shown that way on our balance sheet. If there are changes in interest rates, those changes would affect the investment income we earn on these investments and, therefore, impact our cash flows and results of operations.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements and schedules are listed under Item 15(a) and filed as part of this annual report on Form 10-K.

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

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Bear and Chief Financial Bear, has evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), as of the end of the period covered by this report. Our management, with the participation of our Chief Executive Bear and Chief Financial Bear also conducted an evaluation of our internal control over financial reporting to determine whether any changes occurred during the period covered by this report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. Any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. Based on this evaluation, our management, including the Chief Executive Bear and Chief Financial Bear, concluded that our disclosure controls and procedures were effective as of December 31, 2005, the end of the period covered by this annual report.

It should be noted that our management, including the Chief Executive Bear and the Chief Financial Bear, do not expect that our disclosure controls and procedures or internal controls will prevent all error and all fraud. A control system, no matter how well conceived or operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. The design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting for the Company. Internal control over financial reporting is a process to provide reasonable assurance regarding the reliability of our financial reporting for external purposes in accordance with accounting principles generally accepted in the United States of America. With the participation of our Chief Executive Bear and our Chief Financial Bear, management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the criteria established in *Internal Control —Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of December 31, 2005.

The Company's independent registered public accounting firm has audited and issued their report on management's assessment of the Company's internal control over financial reporting. That report appears in this Item 9A.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Build-A-Bear Workshop, Inc.:

We have audited management's assessment, included in the accompanying Management's Report on Internal Control over Financial Reporting that Build-A-Bear Workshop, Inc. and subsidiaries (the Company) maintained effective internal control over financial reporting as of December 31, 2005, based on criteria established in Internal Control—Integrated Framework issued by the Committee

of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management's assessment that the Company maintained effective internal control over financial reporting as of December 31, 2005, is fairly stated, in all material respects, based on criteria established in Internal Control—Integrated Framework issued by COSO. Also, in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2005, based on criteria established in Internal Control—Integrated Framework issued by COSO.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of the Company as of December 31, 2005, and January 1, 2005, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2005, and our report dated March 15, 2006 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG LLP

St. Louis, Missouri
March 15, 2006

Changes in Internal Controls

There were no material changes in internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) that occurred during the fourth quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

Information concerning directors, appearing under the caption "Board of Directors" in our Proxy Statement (the "Proxy

Statement") to be filed with the SEC in connection with our Annual Meeting of Shareholders scheduled to be held on May 11, 2006 is incorporated by reference in response to this Item 10.

The information appearing under the caption "Section 16(a) Beneficial Ownership reporting Compliance" in the Proxy Statement is incorporated by reference in response to this Item 10.

Business Conduct Policy

The Board of Directors has adopted a Business Conduct Policy applicable to our directors, officers and employees, including all executive officers. The Business Conduct Policy has been posted in the Investor Relations section of our corporate web site at http://ir.buildabear.com. We intend to satisfy the amendment and waiver disclosure requirements under applicable securities regulations by posting any amendments of, or waivers to, the Business Conduct Policy on our web site.

The information appearing under the caption "Code of Ethics" in the Proxy Statement is incorporated by reference in response to this Item 10.

Executive Officers and Key Employees

Set forth below is the name, age, position and a brief account of the business experience of each of our executive officers and key employees as of March 10, 2006.

Name	Age	Position(s)
Maxine Clark	57	Chief Executive Bear and Chairman of the Board
Barry Erdos	62	President and Chief Operating Officer Bear
Tina Klocke	46	Chief Financial Bear, Treasurer and Secretary
Teresa Kroll	51	Chief Marketing Bear
Scott Seay	43	Chief Workshop Bear

Maxine Clark has been our Chief Executive Bear since our inception in 1997, our President from our inception in 1997 to April 2004 and has served as Chairman of our board of directors since our conversion to a corporation in April 2000. From November 1992 until January 1996, Ms. Clark was the President of Payless ShoeSource, Inc. Prior to joining Payless, Ms. Clark spent over 19 years in various divisions of The May Department Stores Company in areas including merchandise development, merchandise planning, merchandise research, marketing and product development. Ms. Clark is a member of the Board of Directors of The J.C. Penney Company, Inc. She also serves on the Board of Trustees of the International Council of Shopping Centers and Washington University in St. Louis and on the Board of Directors of BJC Healthcare. Ms. Clark is also a member of the Committee of 200, an organization for women entrepreneurs around the world.

Barry Erdos has been our President and Chief Operating Officer Bear since April 2004 and was elected to the board of directors in July 2005. Prior to joining us, Mr. Erdos was the Chief Operating Officer and a director of Ann Taylor Stores Corporation and Ann Taylor Inc., a women's apparel retailer, from November 2001 to April 2004. He was Executive Vice President, Chief Financial Officer and Treasurer of Ann Taylor Stores Corporation and Ann Taylor Inc. from 1999 to 2001. Prior to joining Ann Taylor, Mr. Erdos was Chief Operating Officer of J. Crew Group, Inc., a specialty retailer of apparel, shoes and accessories, from 1998 to 1999. From 1988 to 1998, Mr. Erdos held various positions at Limited Brands including Corporate Vice President and Controller, and Executive Vice President of their Lane Bryant, Express and Henri Bendel divisions. Mr. Erdos currently serves as a member of the board and chairman of the audit committee of Bluefly, Inc.

Tina Klocke has been our Chief Financial Bear since November 1997, our Treasurer since April 2000, and Secretary since February 2004. Prior to joining us, she was the Controller for Clayton Corporation, a manufacturing company, where she supervised all accounting and finance functions as well as human resources. Prior to joining Clayton in 1990, she was the controller for Love Real Estate Company, a diversified investment management and development firm. She began her career in 1982 with Ernst & Young LLP.

Teresa Kroll has been our Chief Marketing Bear since September 2001. Prior to joining us Ms. Kroll was Vice President–Advertising for The WIZ, a unit of Cablevision, from 1999 to 2001. From 1995 to 1999, Ms. Kroll was Director of Marketing for Montgomery Ward Holding Corp., a department store retailer. From 1980 to 1994 Ms. Kroll held various administrative and marketing positions for Venture Stores, Inc.

Scott Seay has been our Chief Workshop Bear since May 2002. Prior to joining us, Mr. Seay was Chief of Field Operations for Kinko's Inc., a national chain of copy centers, from April 1999 to May 2002. From April 1991 to April 1999, Mr. Seay held several operational roles including Senior Vice President of Operations West for CompUSA Inc., a computer retailer. From April 1983 to April 1991, Mr. Seay held several operational positions for The Home Depot, Inc.

ITEM 11. EXECUTIVE COMPENSATION

The information contained in the sections titled "Executive Compensation" and "Information About the Board of Directors – Board

of Directors Compensation" in the Proxy Statement is incorporated herein by reference in response to this Item 11.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information contained in the section titled "Security Ownership of Certain Beneficial Owners and Management" in the Proxy Statement is incorporated herein by reference in response to this Item 12.

Equity Compensation Plan Information

Plan category	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted-average exercise price of outstanding options, warrants and rights	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (1)
Equity compensation plans approved by security holders	768,623	$ 14.06	2,711,343
Equity compensation plans not approved by security holders	—	—	—
Total	768,623	$ 14.06	2,711,343

(1) The number of securities remaining available for future issuance under equity compensation plans includes 915,177 shares available for issuance under our Associate Stock Purchase Plan (ASPP). Shares sold under our ASPP can be obtained from treasury stock, authorized but unissued shares or open market purchases of our common stock.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information contained in the section titled "Certain Relationships and Related Party Transactions" in the Proxy Statement is incorporated herein by reference in response to this Item 13.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information contained in the section titled "Principal Accountant Fees" and "Policy Regarding Pre-Approval of Services Provided by the Independent Auditor" in the Proxy Statement is incorporated herein by reference in response to Item 14.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)(1) *Financial Statements*

The financial statements and schedules set forth below are filed on the indicated pages as part of this annual report on Form 10-K.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Build-A-Bear Workshop, Inc.:

We have audited the accompanying consolidated balance sheets of Build-A-Bear Workshop, Inc. and subsidiaries (the Company) as of December 31, 2005 and January 1, 2005, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2005. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

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

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2005 and January 1, 2005, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2005, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of the Company's internal control over financial reporting as of December 31, 2005, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated March 15, 2006 expressed an unqualified opinion on management's assessment of, and the effective operation of, internal control over financial reporting.

/s/ KPMG LLP

St. Louis, Missouri
March 15, 2006

BUILD-A-BEAR WORKSHOP, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(Dollars in thousands, except share and per share data)

	December 31, 2005	January 1, 2005
ASSETS		
Current assets:		
Cash and cash equivalents	$ 90,950	$ 67,327
Inventories	40,157	30,791
Receivables	6,629	3,792
Prepaid expenses and other current assets	6,839	5,320
Deferred tax assets	3,232	2,725
Total current assets	147,807	109,955
Property and equipment, net	89,973	75,815
Note receivable from franchisee	4,518	—
Other intangible assets, net	1,454	1,411
Other assets, net	2,356	2,056
Total Assets	$ 246,108	$ 189,237
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 34,996	$ 25,767
Accrued expenses	15,792	13,966
Gift cards and customer deposits	22,865	16,299
Deferred revenue	7,508	5,923
Total current liabilities	81,161	61,955
Deferred franchise revenue	2,306	2,075
Deferred rent	30,687	26,426
Other liabilities	586	732
Deferred tax liabilities	1,011	2,539
Commitments and contingencies — See Note 11		
Stockholders' equity:		
Preferred stock, par value $0.01. Shares authorized: 15,000,000; No shares issued or outstanding	—	—
Common stock, par value $0.01. Shares authorized: 50,000,000; Issued and outstanding: 20,120,655 and 19,557,784 shares, respectively	201	196
Additional paid-in capital	85,259	77,708
Retained earnings	46,700	19,386
Notes receivable from officers	(151)	(1,770)
Unearned compensation	(1,652)	(10)
Total stockholders' equity	130,357	95,510
Total Liabilities and Stockholders' Equity	$ 246,108	$ 189,237

See accompanying notes to consolidated financial statements.

BUILD-A-BEAR WORKSHOP, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(Dollars in thousands, except share and per share data)

	Fiscal Year		
	2005	2004	2003
Revenues:			
Net retail sales	$ 358,901	$ 300,469	$ 213,427
Franchise fees	1,976	846	245
Licensing revenue	932	347	—
Total revenues	361,809	301,662	213,672
Costs and expenses:			
Cost of merchandise sold	180,373	150,903	115,845
Selling, general, and administrative	133,921	115,993	81,533
Store preopening	4,812	2,186	3,859
Impairment charge (credit)	—	(54)	—
Interest expense (income), net	(1,710)	(299)	(58)
Total costs and expenses	317,396	268,729	201,179
Income before income taxes	44,413	32,933	12,493
Income tax expense	17,099	12,934	4,875
Net income	27,314	19,999	7,618
Cumulative dividends and accretion of redeemable preferred stock	—	1,262	1,970
Cumulative dividends of nonredeemable preferred stock	—	263	455
Net income available to common and participating preferred stockholders	$ 27,314	$ 18,474	$ 5,193
Net income allocated to common stockholders	$ 27,314	$ 8,519	$ 116
Net income allocated to participating preferred stockholders	$ —	$ 9,955	$ 5,077
Earnings per common share:			
Basic	$ 1.38	$ 2.30	$ 0.53
Diluted	$ 1.35	$ 1.07	$ 0.43
Shares used in computing common per share amounts:			
Basic	19,735,067	3,702,365	217,519
Diluted	20,229,978	18,616,435	17,546,348

See accompanying notes to consolidated financial statements.

BUILD-A-BEAR WORKSHOP, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(Dollars in thousands)

	Nonredeemable preferred stock			Common stock	Additional paid-in capital	Retained earnings	Notes receivable from officers	Unearned compensation	Total
	Class A	Class B	Class C						
Balance, December 28, 2002	$ 24	$ 20	$ 50	$ 5	$ 10,820	$ 5,001	$ (1,728)	$ —	$ 14,192
Interest on notes receivable from officers	—	—	—	—	93	—	(93)	—	—
Cumulative dividends and accretion of redeemable preferred stock	—	—	—	—	—	(1,970)	—	—	(1,970)
Other	—	—	—	—	5	—	—	—	5
Net income	—	—	—	—	—	7,618	—	—	7,618
Balance, January 3, 2004	24	20	50	5	10,918	10,649	(1,821)	—	19,845
Interest on notes receivable from officers	—	—	—	—	93	—	(93)	—	—
Collection of notes receivable from officers	—	—	—	—	—	—	144	—	144
Cumulative dividends and accretion of redeemable preferred stock	—	—	—	—	—	(1,262)	—	—	(1,262)
Payment of cash dividend	—	—	—	—	—	(10,000)	—	—	(10,000)
Exercise of stock options and exchange of outstanding shares, net of tax benefit	—	—	(1)	4	460	—	—	—	463
Shares withheld in lieu of tax withholdings	—	—	—	(1)	(539)	—	—	—	(540)
Stock-based compensation related to stock options and restricted stock	—	—	—	—	1,984	—	—	(10)	1,974
Initial public offering, net of offering expenses	—	—	—	15	25,720	—	—	—	25,735
Conversion of redeemable and non-redeemable preferred stock to common stock	(24)	(20)	(49)	173	39,072	—	—	—	39,152
Net income	—	—	—	—	—	19,999	—	—	19,999
Balance, January 1, 2005	—	—	—	196	77,708	19,386	(1,770)	(10)	95,510
Interest on notes receivable from officers	—	—	—	—	26	—	(26)	—	—
Collection of notes receivable from officers	—	—	—	—	—	—	1,645	—	1,645
Issuance of restricted common stock	—	—	—	1	2,436	—	—	(2,437)	—
Employee stock purchases	—	—	—	1	1,670	—	—	—	1,671
Exercise of stock options, net of tax benefit	—	—	—	4	5,829	—	—	—	5,833
Shares withheld in lieu of tax withholdings	—	—	—	(1)	(2,410)	—	—	—	(2,411)
Stock-based compensation related to restricted stock	—	—	—	—	—	—	—	795	795
Net income	—	—	—	—	—	27,314	—	—	27,314
Balance, December 31, 2005	$ —	$ —	$ —	$ 201	$ 85,259	$ 46,700	$ (151)	$ (1,652)	$ 130,357

See accompanying notes to consolidated financial statements.

BUILD-A-BEAR WORKSHOP, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Dollars in thousands)

	Fiscal Year		
	2005	2004	2003
Cash flows from operating activities:			
Net income	$ 27,314	$ 19,999	$ 7,618
Adjustments to reconcile net income to net cash from operating activities:			
Depreciation and amortization	17,592	14,948	12,840
Deferred taxes	(2,035)	(1,875)	1,394
Tax benefit from stock option exercises	3,091	410	—
Loss on disposal of property and equipment	526	533	340
Impairment of goodwill	—	97	200
Impairment charge (credit)	—	(54)	—
Stock-based compensation	795	1,974	—
Change in assets and liabilities:			
Inventories	(9,366)	(8,218)	(1,002)
Receivables	(2,804)	(1,629)	49
Prepaid expenses and other assets	(1,612)	(1,105)	(3,397)
Accounts payable	9,229	3,998	4,483
Accrued expenses and other liabilities	11,912	19,449	9,245
Net cash provided by operating activities	54,642	48,527	31,770
Cash flows from investing activities:			
Purchases of property and equipment	(31,083)	(16,494)	(24,917)
Purchases of other assets	(1,569)	(1,238)	(1,918)
Issuance of note receivable to franchisee	(4,425)	—	—
Purchase of minority interest in subsidiary	—	—	(200)
Net cash used in investing activities	(37,077)	(17,732)	(27,035)
Cash flows from financing activities:			
Exercise of employee stock options	2,742	52	—
Employee stock purchases	1,671	—	—
Collection of notes receivable from officers	1,645	144	—
Payment of cash dividend	—	(10,000)	—
Proceeds from initial public offering, net of offering costs	—	25,735	—
Net cash provided by financing activities	6,058	15,931	—
Net increase in cash and cash equivalents	23,623	46,726	4,735
Cash and cash equivalents, beginning of year	67,327	20,601	15,866
Cash and cash equivalents, end of year	$ 90,950	$ 67,327	$ 20,601
Supplemental disclosure of cash flow information:			
Cash paid during the year for:			
Interest	$ 79	$ 15	$ 13
Income taxes	$ 11,562	$ 13,578	$ 2,249
Noncash transaction:			
Cumulative dividends and accretion of redeemable preferred stock	$ —	$ 1,262	$ 1,970

See accompanying notes to consolidated financial statements.

BUILD-A-BEAR WORKSHOP, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
Years ended December 31, 2005, January 1, 2005 and January 3, 2004

(1) Description of Business

Build-A-Bear Workshop, Inc. (the Company) is a specialty retailer of plush animals and related products. At December 31, 2005, the Company operated 200 stores (unaudited) located in the United States and Canada and an Internet store. The Company was formed in September 1997 and began operations in October 1997. The Company changed to a Delaware C Corporation on April 3, 2000. The Company previously operated as a Missouri Limited Liability Company.

During 2001, the Company and a third party formed Build-A-Bear Entertainment, LLC (BABE) for the purpose of promoting the Build-A-Bear Workshop brand and characters of the Company through certain entertainment media. Prior to February 2003, the Company owned 51% and was the managing member. BABE had no active operations for the period from December 29, 2001 through February 10, 2003. On February 10, 2003, the Company purchased, for $200,000, the 49% minority interest in BABE, which then became a wholly-owned subsidiary.

During 2002, the Company formed Build-A-Bear Workshop Franchise Holdings, Inc. (Holdings) for the purpose of entering into franchise agreements with companies in foreign countries other than Canada. Holdings is a wholly-owned subsidiary of the Company. Since 2002, Holdings has signed franchise agreements with third parties to open Build-A-Bear Workshop stores in various countries throughout the world. For each of the franchise agreements, Holdings received a one-time, nonrefundable fee that has been deferred and is being amortized over the life of the respective franchise agreement. Holdings also receives a percentage of all sales by the franchisees. As of December 31, 2005, the number of Build-A-Bear Workshop franchise stores that are open and operating in these countries is as follows (unaudited):

United Kingdom	11
Japan	5
Australia	5
Denmark	4
Other	5

During 2002, the Company formed Build-A-Bear Workshop Canada Ltd. (BAB Canada) for the purpose of operating Build-A-Bear Workshop stores in Canada. BAB Canada is a wholly-owned subsidiary of the Company.

During 2003, the Company formed Build-A-Bear Retail Management, Inc. (BABRM) for the purpose of providing purchasing, legal, information technology, accounting, and other general management services for Build-A-Bear Workshop stores. BABRM is a wholly-owned subsidiary of the Company.

(2) Summary of Significant Accounting Policies

A summary of the Company's significant accounting policies applied in the preparation of the accompanying consolidated financial statements follows:

(a) Principles of Consolidation

The accompanying consolidated financial statements include the accounts of Build-A-Bear Workshop, Inc. and its wholly-owned subsidiaries: Holdings, BAB Canada, BABE, and BABRM. All significant intercompany accounts are eliminated in consolidation.

Certain reclassifications were made to prior years' financial statements to be consistent with the fiscal 2005 presentation.

(b) Fiscal Year

The Company operates on a 52- or 53-week fiscal year ending on the Saturday closest to December 31. The periods presented in these financial statements are the fiscal years ended December 31, 2005 (fiscal 2005), January 1, 2005 (fiscal 2004), and January 3, 2004 (fiscal 2003). Fiscal years 2005 and 2004 included 52 weeks and fiscal year 2003 included 53 weeks. References to years in these financial statements relate to fiscal years or year ends rather than calendar years.

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(c) Cash and Cash Equivalents

Cash and cash equivalents include cash and short-term highly liquid investments with an original maturity of three months or less.

The majority of the Company's cash and cash equivalents exceed federal deposit insurance limits. The Company has not experienced any losses in such accounts and management believes that the Company is not exposed to any significant credit risk on cash and cash equivalents.

(d) Inventories

Inventories are stated at the lower of cost or market, with cost determined on an average-cost basis.

(e) Receivables

Receivables consist primarily of amounts due to the Company in relation to tenant allowances, corporate product sales, franchisee royalties and product sales, and licensing revenue. The Company assesses the collectibility of all receivables on an ongoing basis by considering its historical credit loss experience, current economic conditions, and other relevant factors. Based on this analysis, the Company has determined that no allowance for doubtful accounts was necessary at either December 31, 2005 or January 1, 2005.

(f) Property and Equipment

Property and equipment consist of leasehold improvements, furniture and fixtures, and computer equipment and software and are stated at cost. Leasehold improvements are depreciated using the straight-line method over the shorter of the useful life of the assets or the life of the lease which is generally ten years. Furniture and fixtures and computer equipment are depreciated using the straight-line method over the estimated service lives ranging from three to seven years. Computer software is amortized using the straight-line method over a period of three years. New store construction deposits are recorded at the time the deposit is made as construction-in-progress and reclassified to the appropriate property and equipment category at the time of completion of construction, when operations of the store commence. Maintenance and repairs are expensed as incurred and improvements are capitalized. Gains or losses on the disposition of fixed assets are recorded upon disposal.

(g) Note Receivable from Franchisee

The note receivable from franchisee consists of principal and accrued interest related to a loan made to one of the Company's international franchisees. The note is stated at face value plus accrued interest. Interest and principal payments do not begin until January 2008.

(h) Other Intangible Assets

Other intangible assets consist primarily of costs related to trademarks and other intellectual property. Trademarks and other intellectual property represent third-party costs that are capitalized and amortized over their estimated lives of three years using the straight-line method.

(i) Other Assets

Other assets consist primarily of deferred leasing fees and deferred costs related to franchise agreements. Deferred leasing fees are initial, direct costs related to the Company's operating leases and are amortized over the term of the related leases. Amortization expense related to other assets was $0.3 million, $0.3 million, and $0.5 million for 2005, 2004, and 2003, respectively.

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(j) Long-lived Assets

Whenever facts and circumstances indicate that the carrying value of a long-lived asset may not be recoverable, the carrying value is reviewed. If this review indicates that the carrying value of the asset will not be recovered, as determined based on projected undiscounted cash flows related to the asset over its remaining life, the carrying value of the asset is reduced to its estimated fair value.

(k) Deferred Rent

Certain of the Company's operating leases contain predetermined fixed escalations of minimum rentals during the original lease terms. For these leases, the Company recognizes the related rental expense on a straight-line basis over the life of the lease and records the difference between the amounts charged to operations and amounts paid as deferred rent. The Company also receives certain lease incentives in conjunction with entering into operating leases. These lease incentives are recorded as deferred rent at the beginning of the lease term and recognized as a reduction of rent expense over the lease term. In addition, certain of the Company's leases contain future contingent increases in rentals. Such increases in rental expense are recorded in the period in which such contingent increases to the rentals take place.

(l) Franchises

The Company defers initial, one-time nonrefundable franchise fees and amortizes them over the life of the respective franchise agreements, which extend for periods up to 10 years. Continuing franchise fees are recognized as revenue as the fees are earned. The Company defers direct and incremental costs incurred with third parties when entering into franchise agreements and amortizes them over the life of the respective franchise agreements.

(m) Retail Revenue Recognition

Net retail sales are net of discounts, exclude sales tax, and are recognized at the time of sale. Shipping and handling costs billed to customers are included in net retail sales.

Revenues from the sale of gift cards are recognized at the time of redemption. Unredeemed gift cards are included in gift cards and customer deposits on the consolidated balance sheets.

The Company has a frequent shopper program for its U.S. stores whereby customers who purchase $100 of merchandise receive $10 off a future purchase. An estimate, based on historical redemption rates, of the amount of revenue to be deferred related to this program is recorded at the time of each purchase as a reduction of net retail sales. The deferred revenue related to this program is included in current liabilities on the consolidated balance sheets and is recognized as net retail sales at the time the discount is redeemed. Management evaluates the redemption rate under this program through the use of frequent shopper cards which have an expiration date after which the frequent purchase discount would not have to be honored. Management reviews these redemption rates and assesses the adequacy of the deferred revenue account at the end of each fiscal quarter. Due to the estimates involved with these assessments, adjustments to the deferral rate are generally made no more often than bi-annually in order to allow time for more definite trends to emerge. Based on this assessment at the end of fiscal 2003, the deferred revenue account was determined to be overstated and was adjusted downward by $1.1 million with a corresponding increase to net retail sales, an increase in net income of $0.7 million, net of income taxes of $0.4 million, and an increase in basic earnings per share of $0.07 for the year ended January 3, 2004. Additionally, the amount of revenue being deferred beginning in fiscal 2004 was decreased by 0.2%, and by another 0.5% beginning with the third quarter of fiscal 2004, to give effect to the change in redemption experience. The changes made to the deferral rate in fiscal 2004 were prospective in nature with no impact on previously reported results of operations. Beginning with the second quarter of fiscal 2005, the amount of revenue being deferred was reduced by 0.1% on a prospective basis from its then current level due to further changes in the Company's redemption experience.

(n) Cost of Merchandise Sold

Cost of merchandise sold includes the cost of the merchandise, royalties paid to licensors of third party branded merchandise, store occupancy cost, including store depreciation, freight costs from the manufacturer to the store, cost of warehousing and distribution,

packaging, damages and shortages, and shipping and handling costs incurred in shipment to customers.

(o) Selling, General, and Administrative Expenses

Selling, general, and administrative expenses include store payroll and related benefits, advertising, credit card fees, and store supplies, as well as central office management payroll and related benefits, travel, information systems, accounting, insurance, legal, and public relations. It also includes depreciation and amortization of central office leasehold improvements, furniture, fixtures, and equipment, as well as amortization of trademarks and intellectual property.

(p) Store Preopening Expenses

Store preopening expenses, including store set-up, certain labor and hiring costs, and rental charges incurred prior to store openings are expensed as incurred.

(q) Advertising

Production costs of commercials and programming are charged to operations in the period during which the production is first aired. The costs of other advertising, promotion and marketing programs are charged to operations in the period the program takes place. Advertising expense was $27.2 million, $22.7 million, and $10.1 million for fiscal years 2005, 2004 and 2003, respectively.

(r) Income Taxes

Income taxes are accounted for using a balance sheet approach known as the asset and liability method. The asset and liability method accounts for deferred income taxes by applying the statutory tax rates in effect at the date of the consolidated balance sheets to differences between the book basis and the tax basis of assets and liabilities.

(s) Earnings Per Share

Certain classes of preferred stock were entitled to participate in cash dividends on common stock prior to their conversion. For purposes of calculating basic earnings per share, undistributed earnings were allocated to common and participating preferred shares on a pro rata basis. Basic earnings per share is determined by dividing net income allocated to common stockholders by the weighted average number of common shares outstanding during the period. Diluted earnings per share reflects the potential dilution that could occur if options to issue common stock or conversion rights of preferred stocks were exercised. In periods in which the inclusion of such instruments is anti-dilutive, the effect of such securities is not given consideration.

All outstanding classes of preferred stock were converted to common stock in conjunction with the completion of the Company’s initial public offering on October 28, 2004.

(t) Stock-Based Compensation

The Company accounts for stock-based compensation in accordance with Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees.* Compensation expense for stock options is measured as the excess, if any, of the fair value of the Company’s common stock at the date of the grant over the amount an employee must pay to acquire the common stock. In the event options are issued at a grant price resulting in compensation, such compensation is deferred as unearned compensation in stockholders’ equity and amortized to expense over the vesting period using the straight-line method.

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In December 2002, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 148, *Accounting for Stock-Based Compensation — Transition and Disclosure, an Amendment of FASB Statement 123*, to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. The Company previously adopted the disclosure-only provisions of SFAS No. 123. For 2003, no compensation cost was recognized at the date of the grant under APB No. 25 for the Company's stock option plans as options were issued at fair value. In 2004, compensation cost was recognized under APB No. 25 due to the issuance of options below the fair value of the Company's common stock and certain other modifications of existing awards. For 2005, compensation cost was recognized due to the vesting of non-vested stock awards made under the Company's stock incentive plan. The following table illustrates the effect on net earnings and net earnings per share as if the Company had applied the fair value recognition provisions of SFAS No. 123 to stock-based employee compensation for all periods presented (in thousands, except per share date):

	2005	2004	2003
Net income:			
As reported	$ 27,314	$ 19,999	$ 7,618
Add stock-based employee compensation expense recorded, net of related tax effects	489	1,446	—
Deduct stock-based employee compensation expense under fair value-based method, net of related tax effects	(2,758)	(2,643)	(243)
Pro Forma	$ 25,045	$ 18,802	$ 7,375
Basic earnings per common share:			
As reported	$ 1.38	$ 2.30	$ 0.53
Pro forma	$ 1.27	$ 2.03	$ 0.51
Diluted earnings per common share:			
As reported	$ 1.35	$ 1.07	$ 0.43
Pro forma	$ 1.24	$ 1.02	$ 0.42

The fair value of each option is estimated on the date of grant using the Black - Scholes option pricing model with the following weighted average assumptions: (a) dividend yield of 0%; (b) expected volatility of 50% for 2005 and 0% for 2004 and 2003 (prior to the Company's initial public offering); (c) risk-free interest rates ranging from 3.5% to 6.3%; and (d) a weighted average expected life of 6.3, 9.4, and 9.3 years for 2005, 2004, and 2003, respectively. The weighted average fair value of the options at the grant date was $17.20, $8.63, and $2.70 per share for grants in fiscal 2005, 2004, and 2003, respectively. For awards with graded vesting, the pro forma disclosures above utilize the accelerated expense attribution method under FASB Interpretation No. 28, *Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plans — An Interpretation of APB Opinions No. 15 and 25.*

On October 21, 2005, the Compensation Committee of the Board of Directors of the Company approved the accelerated vesting of all unvested stock options which were granted prior to March 9, 2005. These options have exercise prices ranging from $20.00 to $34.65 per share**.** Options to purchase 174,056 shares of the Company's stock became exercisable on October 21, 2005 as a result of this acceleration, including 71,000 shares held by the Company's named executive officers. Of these options, 173,056 had exercise prices in excess of the current market value at the time of the acceleration of vesting.

The Compensation Committee's decision to accelerate the vesting of the accelerated options was based upon the issuance by the Financial Accounting Standards Board of Statement of Financial Accounting Standard No. 123 (Revised 2004), "Share-Based Payment" (SFAS 123R), which will require the Company to record compensation expense for unvested stock options effective January 1, 2006. The acceleration of the vesting of these stock options will enable the Company to avoid compensation charges related to these options in subsequent periods under the provisions of SFAS 123R.

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The aggregate compensation expense that would have been recorded subsequent to the adoption of SFAS 123R, but is eliminated as a result of the acceleration of the vesting of these options, is approximately $1.8 million ($1.1 million net of tax). This amount is instead reflected in the above pro forma footnote disclosures for fiscal 2005.

(u) Fair Value of Financial Instruments

For purposes of financial reporting, management has determined that the fair value of financial instruments, including cash and cash equivalents, receivables, accounts payable, and accrued expenses, approximates book value at December 31, 2005 and January 1, 2005.

(v) Use of Estimates

The preparation of the consolidated financial statements requires management of the Company to make a number of estimates and assumptions relating to the reported amount of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Significant items subject to such estimates and assumptions include the carrying amount of property and equipment and intangibles, inventories, and deferred income tax assets and the determination of deferred revenue under the Company's frequent shopper program.

(w) Recent Accounting Pronouncements

In December 2004, the Financial Account Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 123 (revised 2004), *Share-Based Payment* (SFAS 123R), which replaces SFAS No. 123, *Accounting for Stock-Based Compensation*, (SFAS 123) and supersedes Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees* (APB 25). SFAS 123R eliminates the intrinsic value method under APB 25 as an alternative method of accounting for stock-based awards. SFAS 123R also revises the fair value-based method of accounting for share-based payment liabilities, forfeitures and modifications of stock-based awards and clarifies SFAS 123's guidance in several areas, including measuring fair value, classifying an award as equity or as a liability and attributing compensation cost to reporting periods. In addition, SFAS 123R amends SFAS No. 95, *Statement of Cash Flows*, to require that excess tax benefits be reported as a financing cash inflow rather than as a reduction of taxes paid, which is included within operating cash flows. SFAS 123R, as amended by a ruling issued by the Securities and Exchange Commission on April 14, 2005, requires all share-based payments to employees, including grants of employee stock options and stock purchases under certain employee stock purchase plans, to be recognized in the financial statements based on their fair values beginning with the first annual reporting period that begins after June 15, 2005, with early adoption encouraged. The Company plans to adopt SFAS 123R effective January 1, 2006 using the modified prospective method. The Company expects to report stock-based compensation expense of $1.7 million, net of taxes, in fiscal 2006 following the adoption of SFAS 123R.

In May 2005, the FASB issued SFAS No. 154, *Accounting Changes and Error Corrections, a replacement of APB Opinion No. 20, Accounting Changes and FASB Statement No. 3, Reporting Accounting Changes in Interim Financial Statements* (SFAS 154). SFAS 154 provides guidance on the accounting for and reporting of accounting changes and error corrections. It establishes, unless impracticable, retrospective application as the required method for reporting a change in accounting principle in the absence of explicit transition requirements specific to the newly adopted accounting principle. SFAS 154 also provides guidance for determining whether retrospective application of a change in accounting principle is impracticable and for reporting a change when retrospective application is impracticable. The provisions of this Statement are effective for accounting changes and corrections of errors made in fiscal periods beginning after December 15, 2005. The adoption of the provisions of SFAS 154 is not expected to have a material impact on the Company's financial position or results of operations.

On October 6, 2005, the FASB issued FASB Staff Position ("FSP") No. FAS 13-1, *Accounting for Rental Costs Incurred during a Construction Period*. The FASB has concluded that rental costs incurred during and after a construction period are for the right to control the use of a leased asset and must be recognized as rental expense. The Company's current accounting policies are in compliance with the conclusion reached in FSP No. FAS 13-1. The FSP is effective for reporting periods beginning after December 15, 2005. The adoption of the provisions of FSP No. FAS 13-1 is not expected to have a material impact on the Company's financial position or results of operations.

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(3) Note Receivable from Franchisee

On October 4, 2005, the Company entered into a loan agreement (the loan agreement) with Amsbra Limited (Amsbra), an English corporation and a franchisee of the Company. The loan agreement, which has an effective date of September 26, 2005, provides for a $4.425 million line of credit to Amsbra, which amount may be borrowed at any time through March 31, 2006. The purpose of the loan agreement is to provide Amsbra with financing opportunities, if necessary, to enable Amsbra to open additional locations of the Company's stores, as required pursuant to an amendment to the existing franchise agreement between the Company and Amsbra. Amounts outstanding under the loan agreement are collateralized by substantially all of the assets of Amsbra and bear interest at the greater of the prime rate (7.25% at December 31, 2005) plus 0.075% and 7.0% per annum. No principal or interest payments are required under the loan agreement until January 1, 2008. At that time, fixed monthly payments will be required in an amount which will allow for all principal and accrued interest to be repaid by December 2011. As of December 31, 2005, the entire available amount of $4.425 million had been advanced to Amsbra under the loan agreement.

(4) Impairment Charge

During 2001, the Company identified three stores that were not meeting operating objectives and determined the stores were impaired and would be closed at the time of the early termination provision of the leases for each of the stores. The Company recorded a provision for impairment totaling $1.0 million which included $0.9 million related to the write down of property and equipment and other assets and $0.1 million of accrued expenses to be incurred in the closing of the stores at the exercise of the early termination provisions. These accrued expenses represent certain costs to be incurred with the execution of the early termination of the leases and the required restoration of the leased space as a result of the early termination. During 2003, the Company closed one of the stores, one store was closed during 2004, and the remaining store was originally anticipated to close in early 2005. In the fourth quarter of 2004, due to the negotiation of more favorable occupancy costs, the Company determined that the remaining store would not be closed. As a result of that decision, the provision for the costs to be incurred at the closing of that store was reversed during the fourth quarter of 2004. All assets related to these impairment charges are included in the Retail Operations segment. The following table presents activity related to the provision for store closing costs discussed above during fiscal years 2003 and 2004 (in thousands):

Balance at December 28, 2002	$ 122
Store closing costs	(40)
Balance at January 3, 2004	82
Store closing costs	(28)
Reversal of provision	(54)
Balance at January 1, 2005	$ —

(5) Property and Equipment

Property and equipment consist of the following (in thousands):

	2005	2004
Leasehold improvements	$ 98,991	$ 78,321
Furniture and fixtures	19,727	16,932
Computer hardware	12,655	10,396
Computer software	7,250	7,080
Construction in progress	5,853	2,819
	144,476	115,548
Less accumulated depreciation	54,503	39,733
	$ 89,973	$ 75,815

For 2005, 2004, and 2003, depreciation expense was $16.4 million, $13.8 million, and $11.5 million, respectively.

(6) Goodwill

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The changes in the carrying amount of goodwill for fiscal 2003 and 2004 are as follows (in thousands):

Balance as of December 28, 2002	$ 97
Purchase of minority interest in BABE	200
Impairment loss	(200)
Balance as of January 3, 2004	$ 97
Impairment loss	(97)
Balance as of January 1, 2005	$ —

Accumulated amortization related to goodwill was $21,000 at January 3, 2004.

On February 10, 2003, the Company purchased the 49% minority interest in BABE for $0.2 million, which was allocated to goodwill due to the insignificance of the fair value of the identifiable net assets. A goodwill impairment loss of $0.2 million was recognized in the BABE investment since the carrying amount of the investment was greater than the fair value (as determined using the expected present value of future cash flows) and the carrying amount of the goodwill exceeded the implied fair value of that goodwill. The goodwill impairment loss is included in selling, general, and administrative expenses in the consolidated statements of operations. The goodwill related to BABE was allocated to the Licensing and Entertainment segment.

During fiscal 2004, the Company performed a goodwill impairment analysis on the existing goodwill balance, which was entirely related to Shirts Illustrated, LLC (SHI), a consolidated subsidiary. Due to the continued decline in third party sales by SHI, it was determined that the carrying amount of SHI was greater than the fair value of the entity as determined using the expected present value of future cash flows. It was also determined that the carrying amount of the SHI goodwill exceeded its implied fair value. The goodwill impairment loss is included in selling, general, and administrative expenses in the consolidated statements of operations. The goodwill related to SHI was allocated to the Retail Operations segment. On December 30, 2005, SHI was merged into BABRM, a consolidated subsidiary of the Company.

(7) Other Intangible Assets

Other intangible assets consist of the following (in thousands):

	2005	2004
Trademarks and other intellectual property at cost	$ 6,026	$ 5,062
Less accumulated amortization	4,572	3,651
Total, net	$ 1,454	$ 1,411

Trademarks and intellectual property are amortized over three years. Amortization expense related to trademarks and intellectual property was $0.9 million in each year for 2005, 2004, and 2003, respectively. Estimated amortization expense for 2006, 2007, and 2008 is $0.8 million, $0.5 million and $0.2 million, respectively.

(8) Accrued Expenses

Accrued expenses consist of the following (in thousands):

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	2005	2004
Accrued wages, bonuses and related expenses	$ 3,926	$ 7,741
Sales tax payable	4,217	3,525
Current income taxes payable	6,653	2,131
Accrued rent and related expenses	996	569
	$ 15,792	$ 13,966

(9) Income Taxes

The components of the provision for income taxes are as follows (in thousands):

	2005	2004	2003
Current:			
Federal	$ 15,770	$ 12,432	$ 2,795
State	2,584	2,035	636
Foreign	780	342	50
Deferred:			
Federal	(1,757)	(1,617)	1,139
State	(278)	(258)	255
Income tax expense	$ 17,099	$ 12,934	$ 4,875

The income tax expense is different from the amount computed by applying the U.S. statutory Federal income tax rates to income before income taxes. The reasons for these differences are as follows (in thousands):

	2005	2004	2003
Income before income taxes	$ 44,413	$ 32,933	$ 12,493
U.S. statutory Federal income tax rate	35%	35%	34%
Computed income taxes	15,545	11,527	4,248
State income taxes, net of Federal tax benefit	1,498	1,155	579
Other	56	252	48
Income tax expense	$ 17,099	$ 12,934	$ 4,875
Effective tax rate	38.5%	39.3%	39.0%

Temporary differences that gave rise to deferred income tax assets and liabilities are as follows (in thousands):

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	2005	2004
Deferred income tax assets:		
Deferred revenue	$ 4,240	$ 3,310
Accrued rents	3,210	3,207
Deferred compensation	380	102
Intangible assets	1,173	999
Stock compensation	350	509
Other	211	390
Total deferred income tax assets	9,564	8,517
Deferred income tax liabilities:		
Depreciation	(6,963)	(8,162)
Other	(380)	(169)
Total deferred income tax liabilities	(7,343)	(8,331)
Net deferred income tax asset	$ 2,221	$ 186

A valuation allowance would be provided on deferred tax assets when it is more likely than not that some portion of the assets will not be realized. The Company has not established a valuation allowance at December 31, 2005 or January 1, 2005.

(10) Long-Term Debt

On September 27, 2005, the Company amended its previous line of credit (which matured on May 31, 2005) with a bank maintaining their borrowing capacity at $15 million. The amended line of credit has an effective date of May 31, 2005 with a maturity date of September 30, 2007. Borrowings under the amended line of credit (the credit agreement) are not collateralized, but availability under the credit agreement can be limited by the lender based on the Company's levels of accounts receivable, inventory, and property and equipment. The credit agreement requires the Company to comply with certain financial covenants, including maintaining a minimum tangible net worth, maintaining a minimum fixed charge coverage ratio (as defined in the credit agreement) and not exceeding a maximum funded debt to earnings before interest, depreciation and amortization ratio. The credit agreement also places certain restrictions on the payment of dividends and entering into additional financing arrangements. The interest rate for borrowings under the credit agreement is the prime rate (7.25% at December 31, 2005) less 0.5%. The credit agreement also includes a commitment fee of 0.125% per annum on any unused balances. There was no outstanding balance under the credit agreement at December 31, 2005 other than a standby letter of credit for $1.1 million. Giving effect to this standby letter of credit, there was $13.9 million available for borrowing under the credit agreement at December 31, 2005.

(11) Commitments and Contingencies

(a) Operating Leases

The Company leases its retail stores, web fulfillment site, and corporate offices under agreements which expire at various dates through 2016. Each store lease contains provisions for base rent plus contingent payments based on defined sales. Total office and retail store base rent expense was $23.8 million, $19.9 million, and $16.5 million, and contingent rents were $1.8 million, $1.2 million, and $0.7 million for 2005, 2004, and 2003, respectively.

Future minimum lease payments at December 31, 2005, were as follows (in thousands):

2006	$ 26,720
2007	27,648
2008	28,070
2009	27,411
2010	25,888
Subsequent to 2010	69,056
	$ 204,793

(b) Construction Contract

In December 2005, the Company entered into an agreement to construct a distribution center in Groveport, Ohio. The total cost of construction, excluding land and equipment, is expected to be approximately $14.4 million.

(c) Litigation

In the normal course of business, the Company is subject to certain claims or lawsuits. Management is not aware of any claims or lawsuits that will have a material adverse effect on the consolidated financial position or results of operations of the Company.

(12) Earnings Per Share

The following table sets forth the computation of basic and diluted earnings per share (in thousands, except share and per share date):

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	2005	2004	2003
Net income	$ 27,314	$ 19,999	$ 7,618
Cumulative dividends and accretion of redeemable preferred stock	—	1,262	1,970
Cumulative dividends of nonredeemable preferred stock	—	263	455
Net income available to common and participating preferred stockholders	27,314	18,474	5,193
Dividends and accretion related to dilutive preferred stock:			
Series A-1	—	113	195
Series A-2	—	20	35
Series A-3	—	101	175
Series A-4	—	29	50
Series A-5	—	293	439
Series B-4	—	41	19
Series D	—	928	1,512
Total dividends and accretion	—	1,525	2,425
	$ 27,314	$ 19,999	$ 7,618
Net income allocated to common stockholders	$ 27,314	$ 8,519	$ 116
Net income allocated to participating preferred stockholders	$ —	$ 9,955	$ 5,077
Weighted average number of common shares outstanding	19,735,067	3,702,365	217,519
Weighted average number of participating preferred shares outstanding	—	7,805,238	9,527,412
Weighted average number of common shares outstanding	19,735,067	3,702,365	217,519
Effect of dilutive securities:			
Stock options	420,280	556,545	377,528
Restricted stock	74,631	205,845	94,893
	20,229,978	4,464,755	689,940
Convertible preferred shares:			
Series A-1	—	1,203,221	1,400,096
Series A-2	—	148,017	171,679
Series A-3	—	1,016,444	1,182,744
Series A-4	—	217,641	253,260
Series A-5	—	1,122,950	1,306,688
Series B-1	—	226,182	275,352
Series B-2	—	1,193,595	1,453,072
Series B-3	—	255,467	311,003
Series B-4	—	1,318,130	1,604,680
Series C	—	4,084,723	4,998,089
Series D	—	3,365,310	3,899,745
Total dilutive convertible preferred shares	—	14,151,680	16,856,408
Weighted average number of common shares - dilutive	20,229,978	18,616,435	17,546,348
Earnings per share:			
Basic:			
Per common share	$ 1.38	$ 2.30	$ 0.53
Per participating preferred share	$ —	$ 1.28	$ 0.53
Diluted	$ 1.35	$ 1.07	$ 0.43

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In calculating diluted earnings per share for fiscal 2003, convertible preferred shares of 237,734 were outstanding as of the end of the period, but were not included in the computation of diluted earnings per share due to their anti-dilutive effect. There were no convertible preferred shares outstanding at the end of fiscal 2005 or 2004.

In calculating diluted earnings per share for fiscal 2005, options to purchase 173,560 shares of common stock were outstanding as of the end of the period, but were not included in the computation of diluted earnings per share due to their anti-dilutive effect. No options were excluded from the diluted earnings per share calculation for fiscal 2004 or 2003.

(13) Stock Option Plan

On April 3, 2000, the Company adopted the 2000 Stock Option Plan (the Plan). In 2003, the Company adopted the Build-A-Bear Workshop, Inc. 2002 Stock Incentive Plan, and, in 2004, the Company adopted the Build-A-Bear Workshop, Inc. 2004 Stock Incentive Plan (collectively, the Plans).

Under the Plans, as amended, up to 3,700,000 shares of common stock were reserved and may be granted to employees and nonemployees of the Company. The Plan allows for the grant of incentive stock options, nonqualified stock options, and restricted stock. Options granted under the Plan expire no later than 10 years from the date of the grant. The exercise price of each incentive stock option shall not be less than 100% of the fair value of the stock subject to the option on the date the option is granted. The exercise price of the nonqualified options shall be determined from time to time by the compensation committee of the board of directors (the Committee). The vesting provision of individual options is at the discretion of the Committee.

A summary of the balances and activity for the Plans follows:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Fair Value at Grant Date
Outstanding, December 28, 2002	859,815	$ 3.77	
Granted:			
Exercise price equal to fair market value	271,484	9.10	$ 2.70
Exercised	—	—	
Forfeited	63,750	8.78	
Outstanding, January 3, 2004	1,067,549	4.82	
Granted:			
Exercise price less than fair market value	302,234	8.78	8.65
Exercise price equal to fair market value	2,000	20.00	5.86
Exercised	268,912	2.05	
Forfeited	63,463	8.05	
Outstanding, January 1, 2005	1,039,408	6.52	
Granted:			
Exercise price equal to fair market value	218,292	32.73	17.20
Exercised	475,970	5.76	
Forfeited	13,107	28.87	
Outstanding, December 31, 2005	768,623	14.06	
Options Exercisable As Of:			
January 3, 2004	609,139	2.91	
January 1, 2005	1,037,408	6.50	
December 31, 2005	732,623	13.59	

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The Company granted options during 2004 at an exercise price of $8.78 per share, which had been determined to be the fair value of its common stock at the time based on an independent appraisal. Subsequent to such grants, the Company determined that the fair value of the underlying common stock should have been deemed to be approximately $15.00 per share. As a result of this determination, this option issuance generated stock-based compensation of $1.9 million to be recognized over the vesting period of the 302,234 underlying options. These options became fully vested upon completion of the Company's initial public offering on October 28, 2004. Accordingly, all unrecognized compensation expense related to this grant was recognized at that time and is reflected in the consolidated statement of operations for the fiscal year ended January 1, 2005.

In May of 2004, a former officer of the Company surrendered 48,964 shares of Class C preferred stock in exchange for the exercise of 255,600 stock options with exercise prices ranging from $0.47 to $6.10 per share. In conjunction with this transaction, the vesting of 9,400 options with an exercise price of $6.04 per share was accelerated by one calendar month. Stock compensation costs of $26,000 are reflected in the consolidated statements of operations for the modification of the terms of these options. The Company also extended the due date of a loan made to the same former officer. The loan was originally due upon the earlier of the officer's separation date from the Company or September 19, 2006. The officer separated from the Company during 2004. On the date of separation, the due date of the loan was extended until September 19, 2006. The loan was collected in full on November 24, 2004.

In May of 2004, the Company accelerated the vesting of 5,625 options with an exercise price of $9.10 per share. The options were held by a former member of the Company's board of directors. The options were originally scheduled to vest at a rate of 1,875 per year on April 24 of each year through April 24, 2007. Simultaneously with this acceleration, the Company allowed the former director to exercise 7,500 options with an exercise price of $9.10 per share for no consideration. The 7,500 options consisted of the 5,625 accelerated options plus 1,875 previously vested options. At the time of this modification, the fair value of the Company's common stock was $8.78 per share. Accordingly, the Company recognized $66,000 in compensation expense at the time of this modification, which is reflected in the consolidated statements of operations.

Shares available for future option, non-vested stock and restricted stock grants were 1,796,166 and 2,075,553 at the end of 2005 and 2004, respectively.

The following table summarizes information about stock options outstanding at December 31, 2005:

	Options Outstanding			Options Exercisable	
Range of Exercise Prices	Number Outstanding	Weighted Average Remining Contractual Life (in Years)	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
$0.47	80,000	4.3	$ 0.47	80,000	$ 0.47
$6.04 - $6.10	113,000	4.3	6.09	113,000	6.09
$8.42 - $9.10	366,063	6.8	8.89	366,063	8.89
$20.00 - $23.60	36,000	9.6	23.43	1,000	20.00
$29.15 - $34.65	173,560	9.2	34.48	172,560	34.51
Total	768,623	6.8	14.06	732,623	13.59

(14) Stockholders' Equity

(a) Reorganization and Preferred Stock Sales

Effective April 3, 2000, the Company reorganized from an LLC to a C Corporation. The existing LLC members received a total of 9,482,482 shares of Series A, B, and C convertible nonredeemable preferred stock and 217,519 shares of common stock in exchange for their member units.

On April 5, 2000, the Company issued a total of 2,666,666 shares of Series A and B convertible redeemable preferred stock in exchange for $9,837,876 in cash and $1,934,485 in a promissory note from a related party. The note was subsequently collected in full within 30 days of issuance. The proceeds are net of the costs associated with the preferred stock sales of $227,632.

From September through December 2001, the Company issued a total of 3,467,337 shares of Series D convertible redeemable

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preferred stock in exchange for $21,024,016 in cash. The cash proceeds are net of the costs associated with the preferred stock sales of $141,911.

(b) Restricted Stock

On April 3, 2000, the Company issued 274,815 shares of restricted common stock to an officer of the Company in exchange for a promissory note of $1,236,667 that bore interest at 6.60% per annum. Both principal and interest were collected in full in April 2005.

On September 19, 2001, the Company issued 40,982 shares of restricted common stock to two officers of the Company in exchange for nonrecourse promissory notes totaling $249,990 that bear interest at 4.82% per annum. Both principal and interest are due September 2006. On November 24, 2004, the Company collected all outstanding principal and interest related to 20,491 shares of this restricted stock. The collection of these funds removed all remaining restrictions from those shares.

On November 17, 2004, the Company granted 330 shares of non-vested common stock to a member of its board of directors as compensation for services. The shares were issued subject to a restriction of continued service on the board of directors, and all restrictions lapsed one year from the grant date. The fair value of the non-vested stock at the date of grant was $30.33 per share.

In March 2005, the Company granted 51,750 shares of restricted, non-vested stock to certain executives of the Company. The shares vest ratably over a four year period from the date of grant if a certain net income level is achieved by the Company in fiscal 2005 and the executives remain employed by the Company over the vesting period. The executives are entitled to vote these restricted shares and will be eligible for participation in any dividends declared during the vesting period. The net income level required for vesting was achieved in fiscal 2005. Under the provisions of APB Opinion No. 25 and related interpretations, the compensation related to these shares was adjusted to the market value of the Company's common stock as of December 31, 2005, the date the performance condition was satisfied. During 2005, 1,000 shares of the non-vested stock were forfeited by an executive due to the cessation of the executive's employment with the Company. In July 2005, 1,000 shares of non-vested stock were issued under the same terms as the March 2005 grant noted above to a new executive who joined the Company. At December 31, 2005, the total fair value of these restricted stock grants was approximately $1.5 million. During fiscal 2005, the Company recorded compensation expense of approximately $0.6 million related to these restricted stock grants. The remaining unrecorded compensation expense related to these grants is reflected in unearned compensation on the consolidated balance sheet of the Company.

During 2005, an additional 31,196 shares of non-vested stock were granted to various members of the Company's board of directors as compensation for services. The shares were issued subject to a restriction of continued service on the board of directors, and all restrictions lapse over a period from one to three years from the grant date. The weighted average grant date fair value of these non-vested shares was $28.95 per share.

The aggregate unearned compensation expense related to restricted stock was $1.7 million as of December 31, 2005. Based on the vesting provisions of the underlying equity instruments, future compensation expense related to previously issued restricted stock at December 31, 2005 was as follows (in thousands):

2006	$ 1,161
2007	310
2008	163
2009	18
	$ 1,652

The outstanding restricted and non-vested stock is included in the number of outstanding shares on the face of the consolidated balance sheets, but is treated as outstanding stock options for accounting purposes. The shares of restricted and non-vested stock, accounted for as options, are included in the calculation of diluted earnings per share using the treasury stock method, with the proceeds equal to the sum of unrecognized compensation cost and amounts to be collected from the outstanding loans related to the restricted stock, where applicable.

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(c) Preferred Stock

Prior to the Company's initial public offering, 25,000,000 shares of preferred stock were authorized. Preferred stock consisted of various series of Class A, B, C, and D preferred stock. Each class had various dividend, liquidation, and redemption rights as summarized below:

Series of Preferred Stock	Defined Liquidation Rights	Defined Cumulative Dividends	Shares Issued and Outstanding as of January 3, 2004	Liquidation Preference as of January 3, 2004 (in thousands)
A-1	$ 2.451890	0.171632	1,137,898	$ 3,522
A-2	3.556556	0.248959	139,981	629
A-3	2.600746	0.182052	961,263	3,156
A-4	3.484283	0.243900	205,824	905
A-5	5.649780	0.395485	1,061,986	7,575
B-1	1.808051	0.000000	275,352	498
B-2	1.720493	0.000000	1,453,072	2,500
B-3	2.305925	0.000000	311,003	717
B-4	3.739067	0.000000	1,604,680	6,000
C-1	0.105315	0.000000	3,418,306	360
C-2	0.973290	0.000000	1,385,507	1,349
C-3	0.720934	0.000000	194,276	140
D	6.100000	0.427000	3,467,337	24,471
			15,616,485	$ 51,822

During 2004 and 2003, $1.3 million and $2.0 million, respectively, was recorded to increase the carrying value of the Series A-5, B-4, and D redeemable preferred stock to its redemption value. This includes cumulative dividends of $1.1 million and $1.9 million and accretion of equity issuance costs of $0.2 million and $0.1 million for 2004 and 2003, respectively, for the redeemable preferred stock. Cumulative dividends in arrears for the nonredeemable preferred stock totaled approximately $1.7 million at January 3, 2004 and approximately $2.0 million at the date of conversion in conjunction with the initial public offering.

As of August 10, 2004, the Certificate of Incorporation was amended primarily with respect to the liquidation and redemption preferences of the Series A and Series D preferred stock as well as the dividend rights for all series of preferred stock. Previously, Series A and Series D preferred stock accrued a dividend and any accrued and unpaid dividends were added to the original liquidation preference and redemption amounts for these series. Additionally, these series had certain dividend preference rights over other classes of stock.

The amended Certificate of Incorporation effectively set the liquidation preferences and redemption amounts for the Series A and Series D stock to be equal to the original amounts plus the amounts of accrued and unpaid dividends as of July 31, 2004. Additionally, any dividend preferences or restrictions on all series of preferred stock were removed and all series of preferred stock participate on an as converted basis ratably with common stock for any declared dividends.

In August 2004, following the amendment of the Certificate of Incorporation, the Company paid a cash dividend of $10.0 million to the common and preferred stockholders. The dividend equated to $0.55 per share for all classes of stock.

All shares of preferred stock, including shares of preferred stock issuable in exchange for accrued but unpaid dividends, were converted into 17,316,689 shares of common stock upon the completion of the Company's initial public offering.

(d) Initial Public Offering

On October 28, 2004, the Company completed an initial public offering (the "offering") of 7,482,000 shares of common stock, of which 5,982,000 shares were sold by selling shareholders, at a price of $20.00 per share. The proceeds to the Company from the

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offering, after underwriting discounts and offering costs, were approximately $25.7 million. In conjunction with the offering, all shares of preferred stock, including shares of preferred stock issuable in exchange for accrued but unpaid dividends, were converted into 17,316,689 shares of common stock.

As a result of the initial public offering, the Company's charter was amended to authorize 50,000,000 shares of $0.01 par value common stock and 15,000,000 shares of $0.01 par value preferred stock.

(e) Share Activity

The following table summarizes the changes in outstanding shares of all series of common and preferred stock for fiscal 2003, 2004 and 2005:

	Redeemable Preferred Stock			Nonredeemable Preferred Stock			Common Stock
	Class A	Class B	Class D	Class A	Class B	Class C	
Shares as of December 28, 2002 and January 3, 2004	1,061,986	1,604,680	3,467,337	2,444,966	2,039,427	4,998,089	533,316
Exercise of stock options and exchange of outstanding shares						(48,964)	268,912
Shares withheld in lieu of tax withholdings							(61,463)
Issuance of restricted common stock							330
Conversion of preferred stock to common stock	(1,061,986)	(1,604,680)	(3,467,337)	(2,444,966)	(2,039,427)	(4,949,125)	17,316,689
Additional shares issued in the offering							1,500,000
Shares as of January 1, 2005	—	—	—	—	—	—	19,557,784
Employee stock purchases							84,823
Exercise of stock options							475,970
Shares withheld in lieu of tax withholdings							(80,868)
Issuance of restricted common stock							82,946
Shares as of December 31, 2005	—	—	—	—	—	—	20,120,655

(15) Employee Benefit Plans

(a) 401(k) Savings Plan

During 2000, the Company established a defined contribution plan that conforms to IRS provisions for 401(k) plans. The Build-A-Bear Workshop, Inc. Employees Savings Trust covers associates who work 1,000 hours or more in a year and have attained age 21. The Company, at the discretion of its board of directors, can provide for a Company match on the first 6% of employee deferrals. For 2005, 2004, and 2003, the Company provided a match of 30%, 30%, and 25%, respectively, on the first 6% of employee deferrals totaling $0.3 million, $0.2 million, and $0.1 million, respectively. The Company match vests over a five-year period.

(b) Associate Stock Purchase Plan

In October 2004, in connection with the initial public offering, the Company adopted an Associate Stock Purchase Plan ("ASPP"). Under the ASPP, substantially all full-time employees are given the right to purchase shares of the Company's common stock, subject to certain limitations, at 85% of the lesser of the fair market value on the purchase date or the beginning of each purchase period. Up to 1,000,000 shares of the Company's common stock are available for issuance under the ASPP. No shares were issued under the

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ASPP in 2004. In the 2005 fiscal year, 84,823 shares of common stock were issued under the ASPP.

(16) Related-Party Transactions

The Company bought fixtures for new stores and furniture for the corporate offices from a related party. The total payments to this related party for fixtures and furniture amounted to $3.3 million, $1.9 million, and $2.7 million in 2005, 2004, and 2003, respectively. The Company leased part of its corporate office from the same related party in 2004 and 2003. Rent under this lease amounted to $0.1 million and $0.2 million in 2004 and 2003, respectively. The total due to this related party as of December 31, 2005 and January 1, 2005 was $0.1 million and $0.2 million, respectively.

The Company paid $0.8 million and $1.0 million in 2004 and 2003, respectively, for construction management services to an entity controlled by a stockholder holding in excess of 5% of one class of the Company's capital stock prior to the initial public offering. The Company leased one of its retail stores from this same related party in fiscal 2003. In 2003, the Company paid rent totaling $0.1 million under this lease agreement. The total due to this related party as of January 3, 2004 was $7,000. Subsequent to the initial public offering, this stockholder no longer owns in excess of 5% of any class of the Company's capital stock. As a result, the entity controlled by this stockholder is no longer considered a related party. The Company plans to continue to use the same entity for construction management services in the future.

The Company paid $0.4 million and $0.2 million in 2004 and 2003, respectively, for design and other creative services to a stockholder holding in excess of 5% of one class of the Company's capital stock prior to the initial public offering. There were no amounts due to this related party as of January 3, 2004. Subsequent to the initial public offering, this stockholder no longer owns in excess of 5% of any class of the Company's capital stock. As a result, the stockholder is no longer considered a related party. The Company plans to continue to use this stockholder for design and other creative services in the future.

The Company made charitable contributions of $0.8 million, $0.2 million and $0.1 million in 2005, 2004 and 2003, respectively, to a charitable foundation controlled by the executive officers of the Company. The total due to this charitable foundation as of December 31, 2005 and January 1, 2005 was $0.2 million and $0.1 million, respectively.

(17) Major Vendors

Three vendors accounted for approximately 86%, 85%, and 84% of inventory purchases in 2005, 2004, and 2003, respectively.

(18) Segment Information

The Company's operations are conducted through three reportable segments consisting of retail operations, the international segment and the licensing and entertainment segment. The retail operations include the operating activities of the stores in the United States and Canada and other retail delivery operations, including the Company's web-store and non-mall locations such as tourist venues and sports stadiums. The international segment includes the licensing activities of the Company's franchise agreements with locations outside of the United States. The licensing and entertainment segment has been established to market the naming and branding rights of the Company's intellectual properties for third party use. These operating segments represent the basis on which the Company's chief operating decision-maker regularly evaluates the business in assessing performance, determining the allocation of resources and the pursuit of future growth opportunities. The operating segments have discrete sources of revenue, different capital structures and have different cost structures. The reporting segments follow the same accounting policies used for the Company's consolidated financial statements as described in the summary of significant accounting policies.

Following is a summary of the financial information for the Company's reporting segments (in thousands):

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	Retail	International	Licensing & Entertainment	Total
Fiscal 2003				
Net sales to external customers	213,427	245	—	213,672
Net income (loss) before income taxes	14,261	(1,768)	—	12,493
Total assets	125,131	2,920	159	128,210
Capital expenditures	24,839	78	—	24,917
Depreciation and amortization	12,791	49	—	12,840
Fiscal 2004				
Net sales to external customers	300,469	846	347	301,662
Net income (loss) before income taxes	33,796	(990)	127	32,933
Total assets	185,371	3,338	628	189,337
Capital expenditures	16,545	49	—	16,594
Depreciation and amortization	14,438	510	—	14,948
Fiscal 2005				
Net sales to external customers	358,901	1,976	932	361,809
Net income before income taxes	43,764	119	530	44,413
Total assets	235,754	9,279	1,075	246,108
Capital expenditures	30,987	46	50	31,083
Depreciation and amortization	17,039	552	1	17,592

The Company's reportable segments are primarily determined by the types of products and services that they offer. Each reportable segment may operate in many geographic areas. The Company allocates revenues to geographic areas based on the location of the customer or franchisee. The following schedule is a summary of the Company's sales to external customers and long-lived assets by country of domicile (United States of America) and foreign countries (in thousands):

	United States of America	Canada	Other	Total
Fiscal 2003				
Net sales to external customers	210,552	2,875	245	213,672
Property and equipment, net	71,619	2,016	—	73,635
Fiscal 2004				
Net sales to external customers	293,473	7,343	846	301,662
Property and equipment, net	73,780	2,135	—	75,915
Fiscal 2005				
Net sales to external customers	346,819	13,014	1,976	361,809
Property and equipment, net	86,564	3,360	49	89,973

(19) Subsequent Event

On March 3, 2006, the Company entered into definitive agreements to purchase all of the outstanding shares of The Bear Factory Limited, a stuffed animal retailer in the United Kingdom, and Amsbra Limited (Amsbra), the Company's U.K. franchisee. The total cash purchase price of the two entities is approximately $41.4 million, exclusive of the professional fees incurred as a part of the transaction. Included within the approximate purchase price is the forgiveness of the $4.4 million note receivable from Amsbra and all related accrued interest. The transactions are subject to U.K. regulatory approval, and are expected to close late in the first quarter or early in the second quarter of fiscal 2006.

(a)(2) *Financial Statement Schedules*

No additional Financial Statement Schedules are filed as a part of this report pursuant to Item 8 and Item 15(d).

(a)(3) *Exhibits.*

The following is a list of exhibits filed as a part of the annual report on Form 10-K:

Exhibit Number	Description
2.1	Agreement and Plan of Merger dated April 3, 2000 between Build-A-Bear Workshop, L.L.C. and the Registrant (incorporated by reference from Exhibit 2.1 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
3.1	Third Amended and Restated Certificate of Incorporation (incorporated by reference from Exhibit 3.1 of our Current Report on Form 8-K, filed on November 11, 2004)
3.2	Amended and Restated Bylaws (incorporated by reference from Exhibit 3.4 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
4.1	Specimen Stock Certificate (incorporated by reference from Exhibit 4.1 to Amendment No. 3 to our Registration Statement on Form S-1, filed on October 1, 2004, Registration No. 333-118142)
4.2	Stock Purchase Agreement by and among the Registrant, Catterton Partners IV, L.P., Catterton Partners IV Offshore, L.P. and Catterton Partners IV Special Purpose, L.P. and the Purchasers named therein dated as of April 3, 2000 (incorporated by reference from Exhibit 4.2 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
4.3	Stock Purchase Agreement by and among the Registrant and the other Purchasers named therein dated as of September 21, 2001 (incorporated by reference from Exhibit 4.3 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
4.4	Amended and Restated Registration Rights Agreement, dated September 21, 2001 by and among Registrant and certain stockholders named therein (incorporated by reference from Exhibit 4.5 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.1*	Build-A-Bear Workshop, Inc. 2000 Stock Option Plan (incorporated by reference from Exhibit 10.1 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.1.1*	Form of Incentive Stock Option Agreement under the Build-A-Bear Workshop, Inc. 2000 Stock Option Plan (incorporated by reference from Exhibit 10.1.1 to Pre-Effective Amendment No. 3 to our Registration Statement on Form S-1, filed on October 1, 2004, Registration No. 333-118142)
10.1.2*	Form of Nonqualified Stock Option Agreement under the Build-A-Bear Workshop, Inc. 2000 Stock Option Plan (incorporated by reference from Exhibit 10.1.2 to Pre-Effective Amendment No. 3 to our Registration Statement on Form S-1, filed on October 1, 2004, Registration No. 333-118142)
10.2*	Build-A-Bear Workshop, Inc. 2002 Stock Incentive Plan, as amended (incorporated by reference from Exhibit 10.2 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.2.1*	Form of Manager-Level Incentive Stock Option Agreement under the Build-A-Bear Workshop, Inc. 2002 Stock Option Plan (incorporated by reference from Exhibit 10.2.1 to Pre-Effective Amendment No. 3 to our Registration Statement on Form S-1, filed on October 1, 2004, Registration No. 333-118142)
10.2.2*	Form of Nonqualified Stock Option Agreement under the Build-A-Bear Workshop, Inc. 2002 Stock Option Plan (incorporated by reference from Exhibit 10.2.2 to Pre-Effective Amendment No. 3 to our Registration Statement on Form S-1, filed on October 1, 2004, Registration No. 333-118142)
10.3*	Build-A-Bear Workshop, Inc. 2004 Stock Incentive Plan (incorporated by reference from Exhibit 10.3 to Pre-Effective Amendment No. 3 to our Registration Statement on Form S-1, filed on October 1, 2004, Registration No. 333-118142)
10.3.1*	Form of Incentive Stock Option Agreement under the Build-A-Bear Workshop, Inc. 2004 Stock Incentive Plan (incorporated by reference from Exhibit 10.3.1 to Pre-Effective Amendment No. 3 to our Registration Statement on Form S-1, filed on October 1, 2004, Registration No. 333-118142)
10.3.2*	Form of Director Nonqualified Stock Option Agreement under the Build-A-Bear Workshop, Inc. 2004 Stock Incentive Plan (incorporated by reference from Exhibit 10.3.2 to Pre-Effective Amendment No. 3 to our Registration Statement on Form S-1, filed on October 1, 2004, Registration No. 333-118142)
10.3.3*	Model Incentive Stock Option Agreement Under the Registrant's 2004 Stock Incentive Plan (incorporated by reference from Exhibit 10.3.3 to Pre-Effective Amendment No. 5 to our Registration Statement on Form S-1, filed on October 12, 2004, Registration No. 333-118142)

Exhibit Number	Description
10.3.4*	Form of Employee Nonqualified Stock Option Agreement under the Registrant's 2004 Stock Incentive Plan (incorporated by reference from Exhibit 10.3.4 to Pre-Effective Amendment No. 5 to our Registration Statement on Form S-1, filed on October 12, 2004, Registration No. 333-118142)
10.3.5*	Form of the Restricted Stock Agreement under the Registrant's 2004 Stock Incentive Plan (incorporated by reference from Exhibit 10.3.5 to Pre-Effective Amendment No. 5 to our Registration Statement on Form S-1, filed on October 12, 2004, Registration No. 333-118142)
10.4*	Employment, Confidentiality and Noncompete Agreement dated May 1, 2004 between Maxine Clark and the Registrant (incorporated by reference from Exhibit 10.4 to Pre-Effective Amendment No. 2 to our Registration Statement on Form S-1, filed on September 20, 2004, Registration No. 333-118142)
10.4.1*	First Amendment dated February 22, 2006 to the Employment, Confidentiality and Noncompete Agreement dated May 1, 2004 between Maxine Clark and the Registrant
10.5*	Employment, Confidentiality and Noncompete Agreement dated April 13, 2004 between Barry Erdos and the Registrant (incorporated by reference from Exhibit 10.5 to Pre-Effective Amendment No. 2 to our Registration Statement on Form S-1, filed on September 20, 2004, Registration No. 333-118142)
10.5.1*	First Amendment dated February 22, 2006 to the Employment, Confidentiality and Noncompete Agreement dated April 13, 2004 between Barry Erdos and the Registrant
10.6*	Employment, Confidentiality and Noncompete Agreement dated March 7, 2004 between Tina Klocke and the Registrant (incorporated by reference from Exhibit 10.6 to Pre-Effective Amendment No. 2 to our Registration Statement on Form S-1, filed on September 20, 2004, Registration No. 333-118142)
10.6.1*	First Amendment dated February 22, 2006 to the Employment, Confidentiality and Noncompete Agreement dated March 7, 2004 between Tina Klocke and the Registrant
10.7*	Employment, Confidentiality and Noncompete Agreement dated July 9, 2001 between John Burtelow and the Registrant (incorporated by reference from Exhibit 10.7 to Pre-Effective Amendment No. 2 to our Registration Statement on Form S-1, filed on September 20, 2004, Registration No. 333-118142)
10.7.1*	First Amendment dated March 28, 2005 to Employment, Confidentiality and Noncompete Agreement dated July 9, 2001 between John Burtelow and the Registrant (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K, filed on April 1, 2005)
10.8*	Employment, Confidentiality and Noncompete Agreement dated as of March 7, 2004 between Scott Seay and the Registrant (incorporated by reference from Exhibit 10.8 to Pre-Effective Amendment No. 2 to our Registration Statement on Form S-1, filed on September 20, 2004, Registration No. 333-118142)
10.8.1*	First Amendment dated February 22, 2006 to the Employment, Confidentiality and Noncompete Agreement dated March 7, 2004 between Scott Seay and the Registrant
10.9*	Employment, Confidentiality and Noncompete Agreement dated September 10, 2001 between Teresa Kroll and the Registrant (incorporated by reference from Exhibit 10.9 to Pre-Effective Amendment No. 2 to our Registration Statement on Form S-1, filed on September 20, 2004, Registration No. 333-118142)
10.9.1*	First Amendment dated February 22, 2006 to the Employment, Confidentiality and Noncompete Agreement dated September 10, 2001 between Teresa Kroll and the Registrant
10.10*	Form of Indemnification Agreement between the Registrant and its directors and executive officers (incorporated by reference from Exhibit 10.11 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.11	Third Amendment to Loan Documents among the Registrant, Shirts Illustrated, LLC, Build-A-Bear Workshop Franchise Holdings, Inc., Build-A-Bear Entertainment, LLC, Build-A-Bear Retail Management, LLC (incorporated by reference from Exhibit 10.12 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.12	Third Amended and Restated Loan Agreement between the Registrant, Shirts Illustrated, LLC, Build-A-Bear Workshop Franchise Holdings, Inc., Build-A-Bear Entertainment, LLC, and Build-A-Bear Retail Management, Inc., as borrowers, and U.S. Bank National Association, as Lender, entered into on September 27, 2005 with an effective date of May 31, 2005 (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K, filed on October 3, 2005)
10.13	Second Amended and Restated Revolving Credit Note dated May 31, 2005 by the Registrant, Shirts Illustrated, LLC, Build-A-Bear Workshop Franchise Holdings, Inc., Build-A-Bear Entertainment, LLC, and Build-A-Bear Retail Management, Inc., as Borrowers, in favor of U.S. Bank National Association (incorporated by reference from Exhibit 10.2 to our Current Report on Form 8-K, filed on October 3, 2005)
10.14*	Restricted Stock Purchase Agreement dated April 3, 2000 by and between Maxine Clark and the Registrant (incorporated by

	reference from Exhibit 10.16 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.15*	Secured Promissory Note of Maxine Clark in favor of the Registrant, dated April 3, 2000 (incorporated by reference from Exhibit 10.17 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)

Exhibit Number	Description
10.16*	Repayment and Stock Pledge Agreement dated April 3, 2000 by and between Maxine Clark and the Registrant (incorporated by reference from Exhibit 10.18 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.17*	Restricted Stock Purchase Agreement dated September 19, 2001 by and between Tina Klocke and the Registrant (incorporated by reference from Exhibit 10.22 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.18*	Secured Promissory Note of Tina Klocke in favor of the Registrant, dated September 19, 2001 (incorporated by reference from Exhibit 10.23 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.19*	Repayment and Stock Pledge Agreement dated September 19, 2001 by and between Tina Klocke and the Registrant (incorporated by reference from Exhibit 10.24 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.20	Public Warehouse Agreement dated April 5, 2002 between the Registrant and JS Logistics, Inc., as amended (incorporated by reference from Exhibit 10.25 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.20.1	Second Amendment dated June 16, 2005 to the Public Warehouse Agreement dated April 5, 2002 between the Registrant and JS Warehousing, Inc. (incorporated by reference from Exhibit 10.2 to our Quarterly Report on Form 10-Q for the fiscal quarter ended on April 2, 2005)
10.20.2†	Second Amendment dated June 16, 2005 to the Public Warehouse Agreement dated April 5, 2002 between the Registrant and JS Warehousing, Inc. (incorporated by reference from Exhibit 10.2 to our Quarterly Report on Form 10-Q for the fiscal quarter ended July 2, 2005)
10.21	Agreement for Logistics Services dated as of February 24, 2002 by and among the Registrant and HA Logistics, Inc. (incorporated by reference from Exhibit 10.26 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.21.1	Letter Agreement extending Agreement for Logistics Services between HA Logistics, Inc. and the Registrant dated March 22, 2005 (incorporated by reference from Exhibit 10.3 to our Quarterly Report on Form 10-Q for the fiscal quarter ended April 2, 2005)
10.21.2	Letter Agreement extending Agreement for Logistics Services between HA Logistics, Inc. and the Registrant dated May 3, 2005 (incorporated by reference from Exhibit 10.4 to our Quarterly Report on Form 10-Q for the fiscal quarter ended April 2, 2005)
10.21.3†	Letter Agreement dated June 7, 2005 amending the Agreement for Logistics Services dated February 24, 2002 by and among the Registrant and HA Logistics, Inc. (incorporated by reference from Exhibit 10.1 to our Quarterly Report on Form 10-Q for the fiscal quarter ended July 2, 2005)
10.22†	Lease Agreement dated as of June 21, 2001 between the Registrant and Walt Disney World Co. (incorporated by reference from Exhibit 2.1 of our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.23	Amendment and Restatement of Sublease dated as of June 14, 2000 by and between NewSpace, Inc. and the Registrant (incorporated by reference from Exhibit 10.28 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.24	Lease dated May 5, 1997 between Smart Stuff, Inc. and Hycel Partners I, L.P. (incorporated by reference from Exhibit 10.29 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.25	Agreement dated October 16, 2002 between the Registrant and Hycel Properties Co., as amended (incorporated by reference from Exhibit 10.30 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.26	Letter Agreement dated September 30, 2003 between the Registrant and Hycel Properties Co. (incorporated by reference from Exhibit 10.30.1 to Pre-Effective Amendment No. 5 to our Registration Statement on Form S-1, filed on October 12, 2004, Registration No. 333-118142)
10.27	Construction Management Agreement dated November 10, 2003 by and between the Registrant and Hycel Properties Co. (incorporated by reference from Exhibit 10.31 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.28	Agreement dated July 19, 2001 between the Registrant and Adrienne Weiss Company (incorporated by reference from Exhibit 10.32 to our Registration Statement on Form S-1, filed on August 12, 2004, Registration No. 333-118142)
10.29	Lease between 5th Midtown LLC and the Registrant dated July 21, 2004 (incorporated by reference from Exhibit 10.33 to Pre-Effective Amendment No. 1 to our Registration Statement on Form S-1, filed on September 10, 2004, Registration No. 333-118142)
10.30	Exclusive Patent License Agreement dated March 12, 2001 by and between Tonyco, Inc. and the Registrant (incorporated by reference from Exhibit 10.34 to Pre-Effective Amendment No. 2 to our Registration Statement on Form S-1, filed on

Exhibit Number	Description
10.31	Standard Form Industrial Building Lease dated August 28, 2004 between First Industrial, L.P. and the Registrant (incorporated by reference from Exhibit 10.35 to Pre-Effective Amendment No. 4 to our Registration Statement on Form S-1, filed on October 5, 2004, Registration No. 333-118142)
10.32	Loan Agreement by and between Amsbra, Ltd., as Borrower, and Build-A-Bear Workshop Franchise Holdings, Inc., as Lender, entered into on October 4, 2005 with an effective date of September 26, 2005 (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K, filed on October 11, 2005)
10.33	Revolving Credit Note by Amsbra, Ltd., as Borrower, in favor of Build-A-Bear Workshop Franchise Holdings, Inc., dated as of September 26, 2005 (incorporated by reference from Exhibit 10.2 to our Current Report on Form 8-K, filed on October 11, 2005)
10.34	Debenture dated October 11, 2005 by and between Amsbra, Ltd. and Build-A-Bear Workshop Franchise Holdings, Inc. (incorporated by reference from Exhibit 10.3 to our Current Report on Form 8-K, filed on October 11, 2005)
10.35	Facility Construction Agreement dated December 22, 2005 between the Registrant and Duke Construction Limited Partnership
10.36	Real Estate Purchase Agreement dated December 19, 2005 between Duke Realty Ohio and the Registrant
10.37*	Description of Board Compensation for Non-Management Directors effective November 10, 2005 (incorporated by reference from Exhibit 10.1 from our Current Report on Form 8-K, filed on November 16, 2005)
10.38	Share Purchase Agreement dated March 3, 2006 between the Hamleys Group Limited, Build-A-Bear Workshop UK Holdings Limited and The Bear Factory Limited
10.39	Sale and Purchase Agreement dated March 3, 2006 between the Registrant, Build-A-Bear Workshop UK Holdings Limited, the selling shareholders of Amsbra, Ltd. and Andrew Mackay
11.1	Statement regarding computation of earnings per share (incorporated by reference from Note 12 of the Registrant's audited consolidated financial statements included herein)
13.1	Annual Report to Shareholders for the Fiscal Year Ended December 31, 2005 (The Annual Report, except for those portions which are expressly incorporated by reference in the Form 10-K, is furnished for the information of the Commission and is not deemed filed as part of the Form 10-K)
21.1	List of Subsidiaries of the Registrant
23.1	Consent of KPMG LLP
31.1	Rule 13a-14(a)/15d-14(a) certification (pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, executed by the Chief Executive Bear)
31.2	Rule 13a-14(a)/15d-14(a) certification (pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, executed by the Chief Financial Bear)
32.1	Section 1350 Certification (pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, executed by the Chief Executive Bear)
32.2	Section 1350 Certification (pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, executed by the Chief Financial Bear)

* Management contract or compensatory plan or arrangement.

† Confidential treatment requested as to certain portions filed separately with the Securities and Exchange Commission

BUILD-A-BEAR WORKSHOP, INC.

SIGNATURES

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

BUILD-A-BEAR WORKSHOP, INC.

(Registrant)

Date: March 15, 2006

By: /s/ Maxine Clark
Maxine Clark
Chief Executive Bear

By: /s/ Tina Klocke
Tina Klocke
Chief Financial Bear, Treasurer and Secretary

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Maxine Clark and Tina Klocke, and each of them, his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities to sign the Annual Report on Form 10-K of Build-A-Bear Workshop, Inc. (the "Company") for the fiscal year ended December 31, 2005 and any other documents and instruments incidental thereto, together with any and all amendments and supplements thereto, to enable the Company to comply with the Securities Act of 1934, as amended, and any rules, regulations and requirements of the Securities and Exchange Commission in respect thereof, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents and/or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Signatures	Title	Date
/s/ Barney A. Ebsworth Barney A. Ebsworth	Director	March 15, 2006
/s/ Barry Erdos Barry Erdos	Director	March 15, 2006
/s/ Mary Lou Fiala Mary Lou Fiala	Director	March 15, 2006
/s/ James M. Gould James M. Gould	Director	March 15, 2006
/s/ Louis M. Mucci Louis M. Mucci	Director	March 15, 2006

Signatures	Title	Date
/s/ William Reisler William Reisler	Director	March 15, 2006
/s/ Coleman Peterson Coleman Peterson	Director	March 15, 2006
/s/ Joan Ryan Joan Ryan	Director	March 15, 2006
/s/ Maxine Clark Maxine Clark	Chief Executive Bear and Chairman of the Board (Principal Executive Officer)	March 15, 2006
/s/ Tina Klocke Tina Klocke	Chief Financial Bear, Treasurer and Secretary (Principal Financial and Accounting Officer)	March 15, 2006

EXHIBIT 10.4.1

FIRST AMENDMENT TO EMPLOYMENT, CONFIDENTIALITY AND NONCOMPETE AGREEMENT

This First Amendment (the "Amendment") to the Employment, Confidentiality and Non-compete Agreement dated the 1st day of May, 2004 (the "Agreement") is made effective as of February 24, 2006, between **BUILD-A-BEAR WORKSHOP, INC.** ("Company") and **MAXINE CLARK** ("Employee" or "Ms. Clark").

Recital

Company and Employee previously entered into the Agreement whereby Company hired Employee to provide various services to Company under the title of Chief Executive Officer Bear. Company and Employee now mutually desire to amend the Agreement pursuant to the terms of this Amendment.

NOW, THEREFORE, in consideration of the premises and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Section 3(b) of the Agreement is hereby amended as follows:

(b) Bonus. Should Company exceed its sales, profits and other objectives for any fiscal year, Employee shall be eligible to receive a bonus for such fiscal year as determined by the Compensation Committee of the Board of Directors; provided however such potential bonus opportunity for Employee in any fiscal year shall be set by the Compensation Committee such that, if Company exceeds its objectives, Company will pay Employee an amount not less than 125% of Employee's base compensation. Such bonus opportunity will be sufficiently large that if Employee achieves such bonus, she will be Company's highest paid employee. Any bonus payable to Employee will be payable in cash, stock or stock options or combination thereof, all as determined by the Board of Directors of any duly authorized committee thereof, and unless a different payout schedule is applicable for all executive employees of Company, any such bonus payment will be payable in a single, lump sum payment. In the event of termination of this Agreement because of Employee's death or disability (as defined by Section 4.1(b)), termination by Company without Cause pursuant to Section 4.1(d) or pursuant to Employee's right to terminate this Agreement for Good Reason under Section 4.1(e), the bonus criteria shall not change and any bonus shall be pro-rated based on the number of full calendar weeks during the applicable fiscal year during which Employee was employed hereunder.

Such bonus, if any, shall be payable after Company's accountants have determined the sales and profits and have issued their audit report with respect thereto for the applicable fiscal year, which determination shall be binding on the parties. Any such bonus shall be paid within seventy-five (75) days after the end

of each calendar year or thirty (30) days after the issuance of the auditor's report, whichever is later, regardless of Employee's employment status at the time payment is due. If timely payment is not made, Company shall indemnify Employee against any additional tax liability that Employee may incur proximately as a result of the payment being made late.

Notwithstanding anything to the contrary herein, in no event shall Employee actually receive a bonus in any fiscal year of less than an amount, when paid, as would render her the most highly compensated executive at the Company by at least one dollar ($1.00) in terms of cash compensation (base salary plus the cash component of her bonus). For avoidance of doubt, Employee shall be the highest paid executive within Company during each fiscal year of her employment, beginning with Fiscal Year 2005.

2. Section 3(f) of the Agreement is hereby amended as follows:

(f) Other. Employee shall be eligible for a car allowance and such other perquisites as may from time to time be awarded to Employee by Company payable at such times and in such amounts as Company, in its sole discretion, may determine. All such compensation shall be subject to customary withholding taxes and other employment taxes as required with respect thereto. Employee shall also qualify for all rights and benefits for which Employee may be eligible under any benefit plans including group life, medical, health, dental and/or disability insurance or other benefits ("Welfare Benefits") which are provided for employees generally at her then current location of employment. Employee may, in her sole discretion, decline any perquisite (including without limitation the car allowance), proposed annual salary increase, or bonus payment.

3. Section 4.1(b) of the Agreement is hereby amended as follows:

(b) By Company, upon thirty (30) day's prior written notice to Employee in the event Employee, by reason of permanent physical or mental disability (which shall be determined by a physician selected by Company or its insurers and acceptable to Employee or Employee's legal representative (such agreement as to acceptability not to be withheld unreasonably)), shall be unable to perform the essential functions of her position, with or without reasonable accommodation, for six (6) consecutive months; provided, however, Employee shall not be terminated due to permanent physical or mental disability unless or until said disability also entitles Employee to benefits under such disability insurance policy as is provided to Employee by Company.

4. Section 4.1(c) is hereby amended to add the following at the end:

Company shall not invoke this Section 4.1(c) to avoid the effects of Section 4.1(a) or (b).

5. Section 4.1 of the Agreement is hereby amended to add the following at the end:

   In the event of termination for Cause, Employee will be afforded an opportunity prior to the actual date of termination to discuss the matter with Company's Board of Directors.

6. Section 4.2(a) of the Agreement is hereby amended as follows:

   (a) Survival of Covenants. Upon termination of this Agreement, all rights and obligations of the parties hereunder shall cease, except termination of employment pursuant to Section 4 or otherwise shall not terminate or otherwise affect the rights and obligations of the parties pursuant to Section 3(b), Section 3(c) (subject to the terms of the Plan and applicable Option Agreements), and 4.2 through 13 hereof.

7. Section 4.2(b) of the Agreement is hereby amended as follows:

   (b) Severance. In the event during the Employment Period (i) Company terminates Employee's employment without Cause pursuant to Section 4.1(d) or (ii) Employee terminates her employment for Good Reason pursuant to Section 4.1(e), Company shall continue her base salary for a period of twenty-four (24) months following termination, such payments to be reduced by the amount of any cash compensation from a subsequent employer during such period. Company shall also continue Employee's Welfare Benefits for such twenty-four (24) month period as if Employee were an active full-time employee during such period, to the extent permitted by Company's Welfare Benefit Plans. If Employee cannot be treated as an active full-time employee during all or part of such twenty-four (24) months pursuant to the terms of Company's Welfare Benefit Plans, Company shall pay towards the premium for any continuation or conversion insurance coverage available to Employee an amount equal to the amount it was paying for Employee's coverage under Company's Welfare Benefit Plans as of Employee's termination date. Employee shall accept these payments in full discharge of all obligations of any kind which Company has to her except obligations, if any, (i) for post-employment benefits expressly provided under this Agreement and/or at law, (ii) to repurchase any capital stock of Company owned by Employee; or (iii) for indemnification under separate agreement by virtue of Employee's status as a director/officer of Company. Employee shall also be eligible to receive a bonus with respect to the year of termination as provided in Section 3(b).

8. Section 4.2(c) of the Agreement is hereby amended as follows:

   (c) Damages. In the event that during the Initial Term Company terminates Employee's employment without Cause (other than for death or disability) in violation of the terms of this Agreement, Employee shall be entitled to damages in an amount not less than the sum of (i) the amount of base salary Employee would have been paid during the remainder of the Initial Term pursuant to Section 3(a),

and (ii) an amount equal to the bonus Employee would have earned pursuant to Section 3(b) during the Initial Term (but in no event less than the average bonus paid to Employee during the 2 fiscal years immediately preceding such termination). This Section 4.2(c) is not intended to be a limit on the amount of damages Employee may recover or otherwise limit or reduce any remedies available to Employee in the event Company terminates Employee during the Initial Term in violation of the provisions of this Agreement.

9. Section 6(a) of the Agreement is hereby amended as follows:

(a) for twenty-four (24) months, engage in, assist or have an interest in, or enter the employment of or act as an agent, advisor or consultant for, any person or entity which is engaged in the development, manufacture, supplying or sale of a product, process, service or development:

(i) which is competitive with a product, process, service or development on which the Company has expended resources, on which the Employee worked and which, at the time of Employee's termination, Company is selling or producing or has not abandoned plans to sell or produce; or

(ii) with respect to which Employee has or had access to Confidential Information while at Company provided Company has not abandoned, as of the date of Employee's termination, plans to use such Confidential Information.

(in either case (i) or (ii) a "Restricted Activity"), and which person or entity is located within the United States or within any country where Company has established a retail presence either directly or through a franchise arrangement; or

10. The last two (2) sentences of Section 6 of the Agreement are hereby amended as follows:

provided, however, that following termination of her employment, Employee shall be entitled to be an employee of or otherwise associated with an entity that engages in Restricted Activity so long as, for twenty-four (24) months following termination of said employment: (i) the sale of stuffed plush toys is not a material business of the entity; (ii) Employee has no direct or personal involvement in the sale of stuffed plush toys; and (iii) neither Employee, her relatives, nor any other entities with which she is affiliated own more than 1% of the entity. As used in this Section 6, "material business" shall mean that either (A) greater than 10% of annual revenues received by such entity were derived from the sale of stuffed plush toys and related products, or (B) the annual revenues received or projected to be received by such entity from the sale of stuffed plush toys and related products exceeded $10 million, or (C) the entity otherwise annually derives or is projected to derive annual revenues in excess of $5 million from a retail concept that is similar in any material regard to Company.

11. Section 8(b) of the Agreement is hereby amended as follows:

(b) Employee acknowledges that as part of her work for Company she may be asked to create, or contribute to the creation of, computer programs, documentation and other copyrightable works. Employee hereby agrees that any and all computer programs, documentation and other copyrightable materials that she has prepared or worked on for Company, or is asked to prepare or work on by Company, shall be treated as and shall be a "work made for hire," for the exclusive ownership and benefit of Company according to the copyright laws of the United States, including, but not limited to, Sections 101 and 201 of Title 17 of the U.S. Code ("U.S.C.") as well as according to similar foreign laws. Company shall have the exclusive right to register the copyrights in all such works in its name as the owner and author of such works and shall have the exclusive rights conveyed under 17 U.S.C. Sections 106 and 106A including, but not limited to, the right to make all uses of the works in which attribution or integrity rights may be implicated. Without in any way limiting the foregoing, to the extent the works are not treated as works made for hire under any applicable law, Employee hereby irrevocably assigns, transfers, and conveys to Company and its successors and assigns any and all worldwide right, title, and interest that Employee may now or in the future have in or to the works, including, but not limited to, all ownership, U.S. and foreign copyrights, all treaty, convention, statutory, and common law rights under the law of any U.S. or foreign jurisdiction, the right to sue for past, present, and future infringement, and moral, attribution, and integrity rights. Employee hereby expressly and forever irrevocably waives any and all rights that she may have arising under 17 U.S.C. Sections 106A, rights that may arise under any federal, state, or foreign law that conveys rights that are similar in nature to those conveyed under 17 U.S.C. Sections 106A, and any other type of moral right or droit moral.

12. Except to the extent expressly provided herein, the Agreement remains in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this First Amendment effective as of the date indicated above.

MAXINE CLARK

By: /s/ Maxine Clark
Maxine Clark

BUILD-A-BEAR WORKSHOP, INC.

By: /s/ Tina Klocke
Tina Klocke
Chief Financial Bear

EXHIBIT 10.5.1

FIRST AMENDMENT TO EMPLOYMENT, CONFIDENTIALITY AND NONCOMPETE AGREEMENT

This First Amendment (the "Amendment") to the Employment, Confidentiality and Non-compete Agreement dated the 13th day of April, 2004 (the "Agreement") is made effective as of February 24, 2006, between **BUILD-A-BEAR WORKSHOP, INC.** ("Company") and **BARRY ERDOS** ("Employee" or "Mr. Erdos").

Recital

Company and Employee previously entered into the Agreement whereby Company hired Employee to provide various services to Company under the title of President and Chief Operating Officer Bear. Company and Employee now mutually desire to amend the Agreement pursuant to the terms of this Amendment.

NOW, THEREFORE, in consideration of the premises and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Section 3(b) of the Agreement is hereby amended as follows:

Bonus. Should Company exceed its sales, profits, and other objectives for any fiscal year, Employee shall be eligible to receive a bonus for such fiscal year in the amount as determined by the Compensation Committee of the Board of Directors, provided however the potential bonus opportunity for Employee in any given fiscal year will be set by the Compensation Committee such that, if the Company exceeds its objectives, the Company will pay Employee an amount no less than sixty percent (60%) of the Employee's base salary for such fiscal year. Any bonus payable to Employee will be payable in cash, stock or stock options, or any combination thereof, and unless a different payout schedule is applicable for all executive employees of the Company, any such bonus payments will be payable in a single, lump sum payment. In the event of termination of this Agreement because of Employee's death or disability (as defined by Section 4.1(b)), termination by the Company without cause pursuant to Section 4.1(c), or pursuant to Employee's right to terminate this Agreement for Good Reason under Section 4.1(d), the bonus criteria shall not change and any bonus shall be pro-rated based on the number of full calendar weeks during the applicable fiscal year which Employee was employed hereunder.

Such bonus, if any, shall be payable after Company's accountants have finally determined the sales and profits and have issued their audit report with respect thereto for the applicable fiscal year, which determination shall be binding on the parties. Any such bonus shall be paid within seventy-five (75) days after the end of each calendar year or thirty (30) days after the issuance of the auditor's report, whichever is later, regardless of Employee's employment status at the time payment is due. If timely payment is not made, the Company

shall indemnify the Employee against any additional tax liability that the Employee may incur proximately as a result of the payment being made after the seventy-five day period.

2. Section 3(g) of the Agreement is hereby amended as follows:

Other. Employee shall be eligible for such other perquisites as may from time to time be awarded to Employee by Company payable at such times and in such amounts as Company, in its sole discretion, may determine. All such compensation shall be subject to customary withholding taxes and other employment taxes as required with respect thereto. Employee shall also qualify for all rights and benefits for which Employee may be eligible under any benefit plans including group life, medical, health, dental and/or disability insurance or other benefits ("Welfare Benefits") which are provided for employees generally at his then current location of employment. Employee may, in his sole discretion, decline any perquisite, proposed annual salary increase, or bonus payment, provided such decision is communicated to the Company in writing.

3. Section 4.1(b) of the Agreement is hereby amended as follows:

(b) By the Company, upon thirty (30) day's prior written notice to Employee in the event Employee, by reason of permanent physical or mental disability (which shall be determined by a physician selected by Company or its insurers and acceptable to Employee or Employee's legal representative (such agreement as to acceptability not to be withheld unreasonably)), shall be unable to perform the essential functions of his position, with or without reasonable accommodation, for six (6) consecutive months; provided, however, Employee shall not be terminated due to permanent physical or mental disability unless or until said disability also entitles Employee to benefits under such disability insurance policy as is provided to Employee by Company.

4. Section 4.1(c) of the Agreement is hereby amended as follows:

(c) By the Company with or without Cause. For the purposes of this Agreement, "Cause" shall mean: (i) Employee's engagement in any conduct which, in Company's reasonable determination, constitutes gross misconduct, or is illegal, unethical or improper provided such conduct brings detrimental notoriety or material harm to Company; (ii) gross negligence or willful misconduct; (iii) conviction of fraud or theft; (v) a material breach of a material provision of this Agreement by Employee, or (v) failure of Employee to follow a written directive of the Chief Executive Bear or the Board of Directors within thirty (30) days after receiving such notice, provided that such directive is reasonable in scope or is otherwise within the Chief Executive Bear's or the Board's reasonable business judgment, and is reasonably within Employee's control; provided Employee does not cure said conduct or breach

(to the extent curable) within 30 days after the Chief Executive Bear or the Board of Directors provides Employee with written notice of said conduct or breach. In the event of termination for cause, the Employee will afforded an opportunity prior to the actual date of termination to discuss the matter with the Company.

5. Section 4.2(b) of the Agreement is hereby amended as follows:

(b) Severance. In the event (i) the Company terminates Employee's employment during the Employment Period without cause pursuant to Section 4.1 (c) or (ii) the Employee terminates his employment for Good Reason pursuant to Section 4.1(d), the Company shall continue his base salary for a period of twelve (12) months from termination (unless such termination occurs within the first twelve (12) months following the date of this Agreement, in which event such base salary shall be continued for twenty-four (24) months), such payments to be reduced by the amount of any cash compensation from a subsequent employer during such period. The Company shall also continue Employee's Welfare Benefits for such period to the extent permitted by the Company's Welfare Benefit Plans. Employee shall accept these payments in full discharge of all obligations of any kind which Company has to him except obligations, if any, (i) for post-employment benefits expressly provided under this Agreement and/or at law, (ii) to repurchase any capital stock of Company owned by Employee; or (iii) for indemnification under separate agreement by virtue of Employee's status as a director/officer of the Company. Employee shall also be eligible to receive a bonus with respect to the year of termination as provided in Section 3(b).

6. A new Section 20 is hereby inserted into the Agreement as follows:

Board Seat. Employee is currently a Class III member of the Company's Board of Directors. Management of the Company will propose to the Nominating and Corporate Governance Committee (or other successor committee) that Employee be nominated by the Board of Directors for re-election to the Board, and Employee agrees to continue to serve so long as Employee is re-elected by the shareholders, provided however should Employee's employment terminate at any time for any reason (or no reason), Employee will voluntarily and promptly resign from the Board of Directors, unless the Company requests that the Employee remain on the Board through the end of his current term, and for any such terms that the shareholders may elect Employee following such termination. Employee's execution of this Amendment shall be deemed to serve as his written resignation as a Director should his employment terminate for any other reason, unless the Company has requested in writing that Employee continue as a Director.

7. Except to the extent expressly provided herein, the Agreement remains in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this First Amendment effective as of the date indicated above.

BARRY ERDOS

By: /s/ Barry Erdos
Barry Erdos

BUILD-A-BEAR WORKSHOP, INC.

By: /s/ Maxine Clark
Maxine Clark
Chief Executive Bear

EXHIBIT 10.6.1

FIRST AMENDMENT TO EMPLOYMENT, CONFIDENTIALITY AND NONCOMPETE AGREEMENT

This First Amendment (the "Amendment") to the Employment, Confidentiality and Non-compete Agreement dated the 7th day of March, 2004 (the "Agreement") is made effective as of February 24, 2006, between **BUILD-A-BEAR WORKSHOP, INC.** ("Company") and **TINA KLOCKE** ("Employee" or "Ms. Klocke").

Recital

Company and Employee previously entered into the Agreement whereby Company hired Employee to provide various services to Company under the title of Chief Financial Bear, Treasurer and Secretary. Company and Employee now mutually desire to amend the Agreement pursuant to the terms of this Amendment.

NOW, THEREFORE, in consideration of the premises and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Section 3(b) of the Agreement is hereby amended as follows:

Bonus. Should Company exceed its sales, profits and other objectives for any fiscal year, Employee shall be eligible to receive a bonus for such fiscal year in the amount as determined by the Compensation Committee of the Board of Directors; provided however the potential bonus opportunity for Employee in any given fiscal year will be set by the Compensation Committee such that, if the Company exceeds its objectives, the Company will pay Employee in cash an amount no less than thirty five percent (35%) of the Employee's base salary for such fiscal year. Employee may be entitled to additional bonus opportunities payable in stock or stock options or combination thereof, all as determined by the Compensation Committee. Unless a different payout schedule is applicable for all executive employees of the Company, any such cash bonus payment will be payable in a single, lump sum payment. In the event of termination of this Agreement because of Employee's death or disability (as defined by Section 4.1(a)), termination by the Company without Cause pursuant to Section 4.1(c) or pursuant to Employee's right to terminate this Agreement for Good Reason under Section 4.1(d), the bonus criteria shall not change and any bonus shall be pro-rated based on the number of full calendar weeks during the applicable fiscal year during which Employee was employed hereunder.

Such bonus, if any, shall be payable after Company's accountants have finally determined the sales and profits and have issued their audit report with respect thereto for the applicable fiscal year, which determination shall be binding on the parties. Any such bonus shall be paid within seventy-five (75) days after the end of each calendar year regardless of Employee's employment status at the time

payment is due. If timely payment is not made, the Company shall indemnify the Employee against any additional tax liability that the Employee may incur proximately as a result of the payment being made after the seventy-five day period.

2. Section 3(f) of the Agreement is hereby amended as follows:

Other. Employee shall be eligible for such other perquisites as may from time to time be awarded to Employee by Company payable at such times and in such amounts as Company, in its sole discretion, may determine. All such compensation shall be subject to customary withholding taxes and other employment taxes as required with respect thereto. Employee shall also qualify for all rights and benefits for which Employee may be eligible under any benefit plans including group life, medical, health, dental and/or disability insurance or other benefits ("Welfare Benefits") which are provided for employees generally at her then current location of employment. Employee may, in her sole discretion, decline any perquisite, proposed annual salary increase, or bonus payment.

3. Section 4 of the Agreement is hereby amended as follows:

4. Termination of Employment.

4.1 Termination Events. Prior to the expiration of the Employment Period, this Agreement and Employee's employment may be terminated as follows:

(a) Upon Employee's death;

(b) By the Company, upon thirty (30) day's prior written notice to Employee in the event Employee, by reason of permanent physical or mental disability (which shall be determined by a physician selected by Company or its insurers and acceptable to Employee or Employee's legal representative (such agreement as to acceptability not to be withheld unreasonably)), shall be unable to perform the essential functions of her position, with or without reasonable accommodation, for six (6) consecutive months; provided, however, Employee shall not be terminated due to permanent physical or mental disability unless or until said disability also entitles Employee to benefits under such disability insurance policy as is provided to Employee by Company.

(c) By the Company with or without Cause. For the purposes of this Agreement, "Cause" shall mean: (i) Employee's engagement in any conduct which, in Company's reasonable determination, constitutes gross misconduct, or is illegal, unethical or improper provided such conduct brings detrimental notoriety or material harm to Company; (ii) gross negligence or willful misconduct; (iii) conviction of fraud or theft; (v) a material breach of a material provision of this Agreement by Employee, or (v) failure of Employee to follow a written directive of the Chief Executive Bear or the Board of Directors within

thirty (30) days after receiving such notice, provided that such directive is reasonable in scope or is otherwise within the Chief Executive Bear's or the Board's reasonable business judgment, and is reasonably within Employee's control; provided Employee does not cure said conduct or breach (to the extent curable) within 30 days after the Chief Executive Bear or the Board of Directors provides Employee with written notice of said conduct or breach. In the event of termination for cause, the Employee will afforded an opportunity prior to the actual date of termination to discuss the matter with the Company.

(d) By the Employee with or without Good Reason. For purposes of this Agreement, "Good Reason" shall mean (i) a material breach of a material provision of this Agreement by Company, or (ii) relocating Employee to a location more than 100 miles from St. Louis without the express written consent of the Employee; provided Company does not cure said breach within thirty (30) days after Employee provides the Board of Directors with written notice of the breach.

4.2 Impact of Termination.

(a) Survival of Covenants. Upon termination of this Agreement, all rights and obligations of the parties hereunder shall cease, except termination of employment pursuant to Section 4 or otherwise shall not terminate or otherwise affect the rights and obligations of the parties pursuant to Sections 5 through 13 hereof.

(b) Severance. In the event during the Employment Period (i) the Company terminates Employee's employment without cause pursuant to Section 4.1 (c) or (ii) the Employee terminates her employment for Good Reason pursuant to Section 4.1(d), the Company shall continue her base salary for a period of twelve (12) months from termination, such payments to be reduced by the amount of any cash compensation from a subsequent employer during such period. The Company shall also continue Employee's Welfare Benefits for such period to the extent permitted by the Company's Welfare Benefit Plans. Employee shall accept these payments in full discharge of all obligations of any kind which Company has to her except obligations, if any, (i) for post-employment benefits expressly provided under this Agreement and/or at law, (ii) to repurchase any capital stock of Company owned by Employee; or (iii) for indemnification under separate agreement by virtue of Employee's status as a director/officer of the Company. Employee shall also be eligible to receive a bonus with respect to the year of termination as provided in Section 3(c).

4. Except to the extent expressly provided herein, the Agreement remains in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this First Amendment effective as of the date indicated above.

TINA KLOCKE

By: /s/ Tina Klocke
Tina Klocke

BUILD-A-BEAR WORKSHOP, INC.

By: /s/ Maxine Clark
Maxine Clark
Chief Executive Bear

EXHIBIT 10.8.1

FIRST AMENDMENT TO EMPLOYMENT, CONFIDENTIALITY AND NONCOMPETE AGREEMENT

This First Amendment (the "Amendment") to the Employment, Confidentiality and Non-compete Agreement dated the 7th day of March, 2004 (the "Agreement") is made effective as of February 24, 2006, between **BUILD-A-BEAR WORKSHOP, INC.** ("Company") and **ROBERT SCOTT SEAY** ("Employee" or "Mr. Seay").

Recital

Company and Employee previously entered into the Agreement whereby Company hired Employee to provide various services to Company under the title of Chief Workshop Bear. Company and Employee now mutually desire to amend the Agreement pursuant to the terms of this Amendment.

NOW, THEREFORE, in consideration of the premises and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 3(b) of the Agreement is hereby amended as follows:

> Bonus. Should Company exceed its sales, profits and other objectives for any fiscal year, Employee shall be eligible to receive a bonus for such fiscal year in the amount as determined by the Compensation Committee of the Board of Directors; provided however the potential bonus opportunity for Employee in any given fiscal year will be set by the Compensation Committee such that, if the Company exceeds its objectives, the Company will pay Employee in cash an amount no less than thirty five percent (35%) of the Employee's base salary for such fiscal year. Employee may be entitled to additional bonus opportunities payable in stock or stock options or combination thereof, all as determined by the Compensation Committee. Unless a different payout schedule is applicable for all executive employees of the Company, any such cash bonus payment will be payable in a single, lump sum payment. In the event of termination of this Agreement because of Employee's death or disability (as defined by Section 4.1(b)), termination by the Company without Cause pursuant to Section 4.1(c) or pursuant to Employee's right to terminate this Agreement for Good reason under Section 4.1(d), the bonus criteria shall not change and any bonus shall be pro-rated based on the number of full calendar weeks during the applicable fiscal year during which Employee was employed hereunder.
>
> Such bonus, if any, shall be payable after Company's accountants have finally determined the sales and profits and have issued their audit report with respect thereto for the applicable fiscal year, which determination shall be binding on the parties. Any such bonus shall be paid within seventy-five (75) days after the end of each calendar year, regardless of Employee's employment status at the time

payment is due. If timely payment is not made, the Company shall indemnify the Employee against any additional tax liability that the Employee may incur proximately as a result of the payment being made after the seventy-five day period.

2. Section 3(f) of the Agreement is hereby amended as follows:

Other. Employee shall be eligible for such other perquisites as may from time to time be awarded to Employee by Company payable at such times and in such amounts as Company, in its sole discretion, may determine. All such compensation shall be subject to customary withholding taxes and other employment taxes as required with respect thereto. Employee shall also qualify for all rights and benefits for which Employee may be eligible under any benefit plans including group life, medical, health, dental and/or disability insurance or other benefits ("Welfare Benefits") which are provided for employees generally at his then current location of employment. Employee may, in his sole discretion, decline any perquisite, proposed annual salary increase, or bonus payment.

3. Section 4 of the Agreement is hereby amended as follows:

4. Termination of Employment.

4.1 Termination Events. Prior to the expiration of the Employment Period, this Agreement and Employee's employment may be terminated as follows:

(a) Upon Employee's death;

(b) By the Company, upon thirty (30) day's prior written notice to Employee in the event Employee, by reason of permanent physical or mental disability (which shall be determined by a physician selected by Company or its insurers and acceptable to Employee or Employee's legal representative (such agreement as to acceptability not to be withheld unreasonably)), shall be unable to perform the essential functions of his position, with or without reasonable accommodation, for six (6) consecutive months; provided, however, Employee shall not be terminated due to permanent physical or mental disability unless or until said disability also entitles Employee to benefits under such disability insurance policy as is provided to Employee by Company.

(c) By the Company with or without Cause. For the purposes of this Agreement, "Cause" shall mean: (i) Employee's engagement in any conduct which, in Company's reasonable determination, constitutes gross misconduct, or is illegal, unethical or improper provided such conduct brings detrimental notoriety or material harm to Company; (ii) gross negligence or willful misconduct; (iii) conviction of fraud or theft; (v) a material breach of a material provision of this Agreement by Employee, or (v) failure of Employee to follow a written directive of the Chief Executive Bear or the Board of Directors within

thirty (30) days after receiving such notice, provided that such directive is reasonable in scope or is otherwise within the Chief Executive Bear's or the Board's reasonable business judgment, and is reasonably within Employee's control; provided Employee does not cure said conduct or breach (to the extent curable) within 30 days after the Chief Executive Bear or the Board of Directors provides Employee with written notice of said conduct or breach. In the event of termination for cause, the Employee will afforded an opportunity prior to the actual date of termination to discuss the matter with the Company.

(d) By the Employee with or without Good Reason. For purposes of this Agreement, "Good Reason" shall mean (i) a material breach of a material provision of this Agreement by Company, or (ii) relocating Employee to a location more than 100 miles from St. Louis without the express written consent of the Employee; provided Company does not cure said breach within thirty (30) days after Employee provides the Board of Directors with written notice of the breach.

4.2 Impact of Termination.

(a) Survival of Covenants. Upon termination of this Agreement, all rights and obligations of the parties hereunder shall cease, except termination of employment pursuant to Section 4 or otherwise shall not terminate or otherwise affect the rights and obligations of the parties pursuant to Sections 5 through 13 hereof.

(b) Severance. In the event during the Employment Period (i) the Company terminates Employee's employment without cause pursuant to Section 4.1 (c) or (ii) the Employee terminates his employment for Good Reason pursuant to Section 4.1(d), the Company shall continue his base salary for a period of twelve (12) months from termination, such payments to be reduced by the amount of any cash compensation from a subsequent employer during such period. The Company shall also continue Employee's Welfare Benefits for such period to the extent permitted by the Company's Welfare Benefit Plans. Employee shall accept these payments in full discharge of all obligations of any kind which Company has to his except obligations, if any, (i) for post-employment benefits expressly provided under this Agreement and/or at law, (ii) to repurchase any capital stock of Company owned by Employee; or (iii) for indemnification under separate agreement by virtue of Employee's status as a director/officer of the Company. Employee shall also be eligible to receive a bonus with respect to the year of termination as provided in Section 3(c).

5. Except to the extent expressly provided herein, the Agreement remains in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this First Amendment effective as of the date indicated above.

ROBERT SCOTT SEAY

By: /s/ Robert Scott Seay
Robert Scott Seay

BUILD-A-BEAR WORKSHOP, INC.

By: /s/ Maxine Clark
Maxine Clark
Chief Executive Bear

EXHIBIT 10.9.1

FIRST AMENDMENT TO EMPLOYMENT, CONFIDENTIALITY AND NONCOMPETE AGREEMENT

This First Amendment (the "Amendment") to the Employment, Confidentiality and Non-compete Agreement dated the 10th day of September, 2001 (the "Agreement") is made effective as of February 24, 2006, between **BUILD-A-BEAR WORKSHOP, INC.** ("Company") and **TERESA KROLL** ("Employee" or "Ms. Kroll").

Recital

Company and Employee previously entered into the Agreement whereby Company hired Employee to provide various services to Company under the title of Chief Marketing Bear. Company and Employee now mutually desire to amend the Agreement pursuant to the terms of this Amendment.

NOW, THEREFORE, in consideration of the premises and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Section 3(c) of the Agreement is hereby amended as follows:

Bonus. Should Company exceed its sales, profits and other objectives for any fiscal year, Employee shall be eligible to receive a bonus for such fiscal year in the amount as determined by the Compensation Committee of the Board of Directors; provided however the potential bonus opportunity for Employee in any given fiscal year will be set by the Compensation Committee such that, if the Company exceeds its objectives, the Company will pay Employee in cash an amount no less than thirty five percent (35%) of the Employee's base salary for such fiscal year. Employee may be entitled to additional bonus opportunities payable in stock or stock options or combination thereof, all as determined by the Compensation Committee. Unless a different payout schedule is applicable for all executive employees of the Company, any such cash bonus payment will be payable in a single, lump sum payment. In the event of termination of this Agreement because of Employee's death or disability (as defined by Section 4.1(a) or 4.1(b)), termination by the Company without Cause pursuant to Section 4.1(c) or pursuant to Employee's right to terminate this Agreement for Good Reason under Section 4.1(d), the bonus criteria shall not change and any bonus shall be pro-rated based on the number of full calendar weeks during the applicable fiscal year during which Employee was employed hereunder.

Such bonus, if any, shall be payable after Company's accountants have finally determined the sales and profits and have issued their audit report with respect thereto for the applicable fiscal year, which determination shall be binding on the parties. Any such bonus shall be paid within seventy-five (75) days after the end of each calendar year, regardless of Employee's employment status at the time

payment is due. If timely payment is not made, the Company shall indemnify the Employee against any additional tax liability that the Employee may incur proximately as a result of the payment being made after the seventy-five day period.

2. Section 3(i) of the Agreement is hereby amended as follows:

Other. Employee shall be eligible for such other perquisites as may from time to time be awarded to Employee by Company payable at such times and in such amounts as Company, in its sole discretion, may determine. All such compensation shall be subject to customary withholding taxes and other employment taxes as required with respect thereto. Employee shall also qualify for all rights and benefits for which Employee may be eligible under any benefit plans including group life, medical, health, dental and/or disability insurance or other benefits ("Welfare Benefits") which are provided for employees generally at her then current location of employment. Employee may, in her sole discretion, decline any perquisite, proposed annual salary increase, or bonus payment.

3. Section 4 of the Agreement is hereby amended as follows:

4. Termination of Employment.

4.1 Termination Events. Prior to the expiration of the Employment Period, this Agreement and Employee's employment may be terminated as follows:

(a) Upon Employee's death;

(b) By the Company, upon thirty (30) day's prior written notice to Employee in the event Employee, by reason of permanent physical or mental disability (which shall be determined by a physician selected by Company or its insurers and acceptable to Employee or Employee's legal representative (such agreement as to acceptability not to be withheld unreasonably)), shall be unable to perform the essential functions of her position, with or without reasonable accommodation, for six (6) consecutive months; provided, however, Employee shall not be terminated due to permanent physical or mental disability unless or until said disability also entitles Employee to benefits under such disability insurance policy as is provided to Employee by Company.

(c) By the Company with or without Cause. For the purposes of this Agreement, "Cause" shall mean: (i) Employee's engagement in any conduct which, in Company's reasonable determination, constitutes gross misconduct, or is illegal, unethical or improper provided such conduct brings detrimental notoriety or material harm to Company; (ii) gross negligence or willful misconduct; (iii) conviction of fraud or theft; (v) a material breach of a material provision of this Agreement by Employee, or (v) failure of Employee to follow a written directive of the Chief Executive Bear or the Board of Directors within

thirty (30) days after receiving such notice, provided that such directive is reasonable in scope or is otherwise within the Chief Executive Bear's or the Board's reasonable business judgment, and is reasonably within Employee's control; provided Employee does not cure said conduct or breach (to the extent curable) within 30 days after the Chief Executive Bear or the Board of Directors provides Employee with written notice of said conduct or breach. In the event of termination for cause, the Employee will afforded an opportunity prior to the actual date of termination to discuss the matter with the Company.

(d) By the Employee with or without Good Reason. For purposes of this Agreement, "Good Reason" shall mean a material breach of a material provision of this Agreement by Company, provided Company does not cure said breach within thirty (30) days after Employee provides the Board of Directors with written notice of the breach.

4.2 Impact of Termination.

(a) Survival of Covenants. Upon termination of this Agreement, all rights and obligations of the parties hereunder shall cease, except termination of employment pursuant to Section 4 or otherwise shall not terminate or otherwise affect the rights and obligations of the parties pursuant to Sections 5 through 13 hereof.

(b) Severance. In the event during the Employment Period (i) the Company terminates Employee's employment without cause pursuant to Section 4.1 (c) or (ii) the Employee terminates her employment for Good Reason pursuant to Section 4.1(d), the Company shall continue her base salary for a period of twelve (12) months from termination, such payments to be reduced by the amount of any cash compensation from a subsequent employer during such period. The Company shall also continue Employee's Welfare Benefits for such period to the extent permitted by the Company's Welfare Benefit Plans. Employee shall accept these payments in full discharge of all obligations of any kind which Company has to her except obligations, if any, (i) for post-employment benefits expressly provided under this Agreement and/or at law, (ii) to repurchase any capital stock of Company owned by Employee; or (iii) for indemnification under separate agreement by virtue of Employee's status as a director/officer of the Company. Employee shall also be eligible to receive a bonus with respect to the year of termination as provided in Section 3(c).

5. Except to the extent expressly provided herein, the Agreement remains in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this First Amendment effective as of the date indicated above.

TERESA KROLL

By: /s/ Teresa Kroll
Teresa Kroll

BUILD-A-BEAR WORKSHOP, INC.

By: /s/ Maxine Clark
Maxine Clark
Chief Executive Bear

Document A141™ — 2004

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the 19th day of December in the year of 2005
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

Build-A-Bear Workshop, Inc.
a Delaware Corporation
1954 Innerbelt Business Center Drive
St. Louis, MO 63114-5760

and the Design-Builder:
(Name, address and other information)

Duke Construction Limited Partnership
an Indiana Limited Partnership
5600 Blazer Parkway, Ste. 100
Dublin, OH 43017

For the following Project:
(Name, location and detailed description)

Build-A-Bear Distribution Center Groveport, Ohio

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

TABLE OF ARTICLES

TABLE OF EXHIBITS

ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; the Design-Builder's Proposal and written modifications to the Proposal accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall Fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date established in the Project Schedule attached to this Agreement as Exhibit B (the "Project Schedule").

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

(Insert Owner's time requirements.)

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work not later than the date established in the Project Schedule, Exhibit B dated December 19, 2005.
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Design-Build Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

The Project Schedule, Exhibit B, assumes that the Agreement would be executed not later than December 16, 2005. The Design-Builder shall be entitled to one additional calendar day to achieve Substantial Completion of the Work for each calendar day after December 16, 2005, until the Agreement is executed. Any additional days shall be added to the Agreement by Change Order.

Portion of Work	**Substantial Completion Date**

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

[X] Stipulated Sum in accordance with Section 4.2 below;

[ ] Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;

[ ] Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)

§4.2 STIPULATED SUM
§ 4.2.1 The Stipulated Sum shall be Fourteen Million Four Hundred Thirty Four Thousand Four Hundred Ninety Four Dollars and No Cents ($14,434,494.00), subject to additions and deductions as provided in the Design-Build Documents.

§ 4.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner: Not Applicable

§ 4.2.3 Unit prices, if any, are set forth in the Design-Builder's Proposal, Exhibit D-l. Not applicable

Description	**Units**	**Price($0.00)**

(Paragraph deleted)

§ 4.2.4 Allowances, if any, are set forth in Exhibit E. If the cost of an allowance item exceeds the cost stated therefore in Exhibit E, the Contract Sum shall be increased by the excess amount.
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both)

Allowance	Amount ($ 0.00)	Included Items

§ 4.2.5 Assumptions or qualifications, if any, on which the Stipulated Sum is based, are set forth in Exhibit D-l to this Agreement and this clause.

.1 If a specific Contractor is recommended to the Owner by the Design-Builder, but the Owner requires that another bid be accepted, the additional time and expense relating to the selection and use of the substitute Contractor shall be authorized by Change Order to increase the Contract Time and the Contract Sum.

.2 If the Design-Builder is required to pay any new federal, state or local tax, or of any rate increase of an existing tax (except a tax on net profits) as a result of any law, rule or regulation taking effect after the date of this Agreement, the Contract Sum shall be increased by the amount of the new or increased tax.

.3 Intentionally omitted.

.4 If bids for allowances are not received within the time scheduled at the time the Contract Sum was established, due to causes beyond the Design-Builder's reasonable control, the Contract Sum shall be increased to reflect any increase in the general level of prices occurring between the originally-scheduled date and the date on which bids are received.

§ 4.3 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE
§4.3.1
§4.3.2
(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

§ 4.4 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE

(Paragraph deleted)

§
§

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

§ 4.4.3 GUARANTEED MAXIMUM PRICE
§

(Paragraph deleted)

§

(Paragraph deleted)

§

(Paragraph deleted)

Description	Units	Price ($ 0.00)

§

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Allowance	Amount ($ 0.00)	Included Items

§

(Identify the assumptions on which the Guaranteed Maximum Price is based.)

§ 4.5 CHANGES IN THE WORK

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions. A markup of fifteen per cent (15%) shall be included in Change Orders that increase the Contract Sum as a reasonable markup for overhead and profit of the Design/Builder provided that for each single Change Order item valued at Two Hundred Thousand Dollars and No Cents ($200,000) or more before the addition of overhead and profit, the Owner and Design-Builder shall negotiate a reasonable markup for overhead and profit for that item.

(Paragraph deleted)

§

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month,

§ 5.1.3 Provided that an Application for Payment is received not later than the 10th day of month, the Owner shall make payment to the Design-Builder not later than the 25th day of the same month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than fifteen (15) days after the Owner receives the Application for Payment.

§ 5.1.4

§ 5.1.5 With each Application for Payment the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may

require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

(Paragraph deleted)

§ 5.1.7 An initial payment of Three Hundred Thousand Dollars and No Cents ($300,000) ("Initial Payment") shall be tendered to the Design-Builder upon the execution of this Agreement to facilitate the ordering and procurement of structural steel and precast concrete for the Project. Payment shall be credited against the Contract Sum due the Design/Builder. Once the orders for structural steel and precast concrete are placed, such Initial Payment is non-refundable to the extent of costs actually incurred in the ordering and procurement of specified materials and the cancellation of such orders.

§ 5.2 PROGRESS PAYMENTS — STIPULATED SUM

§ 5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of (10%) on the Work, other than services provided by design professionals and other consultants retained directly by the Design-Builder. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;

.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten per cent (10%);

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract amounts, if any, for which the Owner has withheld payment from or nullified an Application for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.2.3 The progress payment amount determined in accordance with Section 5.2.2 shall be further modified under the following circumstances:

.1 add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and

(Section A.9.8.6 of Exhibit A, Terms and Conditions requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any,)

.2 add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section A.9.10.3 of Exhibit A, Terms and Conditions.

§ 5.2.4 Reduction or limitation of retainage, if any, under Section 5.2.2 shall be as follows:
(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.2,2.1 and 5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert here provisions for such reduction or limitation.)

.1 Once each early finishing Contractor has completed its Work and that Work has been accepted by the Owner, the Owner shall release final retention on that portion of the Work; and

.2 After the Work is fifty percent (50%) complete, the Owner shall withhold no additional retainage.

3 There shall be no retainage held on General Conditions items.

.4 At Substantial Completion, the Owner shall be entitled to withhold from the payment required by **§A.9.8.6** an amount equal to one hundred fifty per cent (150%) of the value of the items on the comprehensive list submitted by the Design-Builder pursuant to **§A.9.8.2** plus the value of items disclosed by the Owner's inspection pursuant to **§A.9.8.3.** The Design-Builder may invoice for completed items no more often than monthly and shall be entitled to all unpaid retainage at Final Completion.

§ 5.3 PROGRESS PAYMENTS — COST OF THE WORK PLUS A FEE

§

(Paragraph deleted)

(Paragraph deleted)

§

(Paragraphs deleted)

§

§ 5.4 PROGRESS PAYMENTS – COST OF THE WORK PLUS A FEE WITH A GUARANTED MAXIMUM PRICE

§

§

(Paragraph deleted)

(Paragraphs deleted)

§ 5.4.3 If the Owner holds retainage:

§ 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

ARTICLE 6 DISPUTE RESOLUTION

§6.1

(Insert the name, address and other information of the individual to serve as a Neutral, If the parties do not select a Neutral, then the provisions of Section A.4.2.2 of Exhibit A. Terms and Conditions, shall apply.)

§ 6.2 If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:

(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)
(Check one.)

[X] Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If Arbitration is selected by the parties as the method of binding dispute resolution, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration as provided in Section A.4.4 of Exhibit A, Terms and Conditions.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:

(Insert name, address, license number, relationship to Design-Builder and other information.)

Name and Address	License Number	Other Information

§ 7.2 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:

(*Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)*

Name and Address	License Number	Other Information

§ 7.3 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:

(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)

Name and Address	License Number	Other Information

§ 7.4 The Owner's Designated Representative is:
(Insert name, address and other information.)

§ 7.4.1 The Owner's Designated Representative identified above shall be authorized to act on the Owner's behalf with respect to the Project.

§ 7.5 The Design-Builder's Designated Representative is:
(Insert name, address and other information.)

§ 7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

§ 7.7 Other provisions:

Except as otherwise provided to the contrary hereinbelow, this Agreement and the obligations of the parties hereunder are contingent upon the execution of and occurrence of a closing under that certain Real Estate Purchase Agreement of even date herewith by and between Owner, as Buyer, and Duke Realty Ohio, as Seller (the "Purchase Agreement"), for the purchase of the property upon which the Project is to be built. In the event that (i) the Purchase Agreement is not executed by the parties thereto, or (ii) a closing under such Purchase Agreement does not occur, then this Agreement shall terminate and be and become null and void, except that Owner shall be responsible for the costs incurred by Design-Builder for the procurement of structural steel and precast concrete for the Project under Section 5.1.7 and for the Peat Remediation under Exhibit F.

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Document.

§ 7.7.2 Payments due and unpaid under the Design-Build Contract shall bear interest from the date payment is due at the legal rate prevailing from time to time at the place where the Project is located, or in the absence thereof, LIBOR plus 3%.
(Insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design-Builder's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004.

§8.1.2
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

(Rows deleted)

§ 8.1.3

(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)

(Rows deleted)

§ 8.1.4 The Design-Builder's Proposal is attached to this Agreement as Exhibit D-l.(Either list applicable documents below or refer to an exhibit attached to this Agreement.)
§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are included in Exhibit D-l to this Agreement.
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.6 The Addenda, if any, are as follows:

(Either list applicable documents below or refer to an exhibit attached to this Agreement.)
Title of the Addenda exhibit:

(Rows deleted)

§ 8.1.7 Exhibit A, Terms and Conditions.
(If the parties agree to substitute terms and conditions other than those contained in AIA Document A141-2004, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)

§ 8.1.8 Exhibit B, Project Schedule.
(If the parties agree to substitute a method to determine the cost of the Work other than that contained in AIA Document A1 41-2004, Exhibits, Determination of the Cost of the Work, then identify such other method to determine the cost of the Work and attach to this Agreement as Exhibit B. If the Contract Sum is a Stipulated Sum, then Exhibit B is not applicable.)

§ 8.1.9 Exhibit C, Insurance and Bonds, if applicable.
(Complete AIA Document A141-2004, Exhibit C, Insurance and Bonds or indicate "not applicable,")

§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Title of the Other exhibits:
Exhibit E – Allowances
Exhibit F — Pre-Acquisition Expenditure Categories

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Design-Builder and one to the Owner.

Build-A-Bear Workshop, Inc.	Duke Construction Limited Partnership
/s/ Maxine Clark	/s/ William J. DeBoer
OWNER *(Signature)*	DESIGN-BUILDER *(Signature)*
Maxine Clark	William J. DeBoer SVP
(Printed name and title)	*(Printed name and title)*

Document A141™ — 2004 Exhibit A

Terms and Conditions

for the following PROJECT:
(Name and location or address)

Build-A-Bear Distribution Center
(Groveport, Ohio
THE OWNER:
(Name and location)

Build-A-Bear Workshop, Inc.
a Delaware corporation
1954 Innerbelt Business Center Drive
St. Louis. Missouri 63114-5760

THE DESIGN-BUILDER:
(Name and location)

Duke Construction Limited Partnership,
an Indiana limited partnership
5600 Blazer Parkway, Sie. 100
Dubin Ohio 43017

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has Important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

TABLE OF ARTICLES

ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 BASIC DEFINITIONS

§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS

The Design-Build Documents are identified in Section 1.1 of the Agreement.

§ A.1.1.2 PROJECT CRITERIA

The Project Criteria are identified in Section 8.1.3 of the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

§ A.1.1.3 ARCHITECT

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§A.1.1.4 CONTRACTOR

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

§ A.1.1.5 SUBCONTRACTOR

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

§ A.1.1.6 THE WORK

The term "Work" means the design, construction and services required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

§ A.1.1.7 THE PROJECT

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and which may include design and construction by the Owner or by separate contractors.

§ A.1.1.8 THE CONSTRUCTION DOCUMENTS
(Paragraph deleted)

The "Construction Documents" are the drawings and specifications establishing the requirements of the Work to be performed by the Design-Builder. Once approved by the Owner, the Construction Documents shall be identified in an addendum to this Agreement or by a no-cost Change Order.

§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation.

§ A.1.2.2 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but not that such information complies with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which

complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner.

§A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

§A.1.4 INTERPRETATION

§ A.1.4.1 In the interest of brevity, the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ A.1.4.3 The intent of the Construction Documents is to include those items which are necessary for the completion of the Work by the Design-Builder. Performance by the Design-Builder shall be required only to the extent consistent with the Construction Documents. In the event of conflict between the terms or provisions of this Agreement and any of the other Design-Build Documents, the terms or provisions of this Agreement shall control.

§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ A.1.6.1 Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder are Instruments of Service. The Design-Builder, Design-Builder's Architect and other providers of professional services individually shall retain all common law, statutory and other reserved rights, including copyright in those Instruments of Services furnished by them. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to this Project.

§ A.1.6.2 Upon execution of the Design-Build Contract, the Design-Builder grants to the Owner a non-exclusive license to reproduce and use the Instruments of Service solely in connection with the Project, including the Project's further development by the Owner and others retained by the Owner for such purposes, provided that the Owner shall comply with all obligations, including prompt payment of sums when due, under the Design-Build Documents. Subject to the Owner's compliance with such obligations, such license shall extend to those parties retained by the Owner for such purposes, including other design professionals. The Design-Builder shall obtain similar nonexclusive licenses from its design professionals, including the Architect. In the event of such use, the Owner shall defend and indemnify the Design-Builder, the Architect and the authors of the documents against all claims relating to such use. The Owner shall not otherwise assign or transfer any license herein to another party without prior written agreement of the Design-Builder. Any unauthorized reproduction or use of the Instruments of Service by the Owner or others shall be at the Owner's sole risk and expense without liability to the Design-Builder and its design professionals. Except as provided in Section A. 1.6.4, termination of this Agreement prior to completion of the Design-Builder's services to be performed under this Agreement shall terminate this license.

§ A.1.6.3 Prior to any electronic exchange by the parties of the Instruments of Service or any other documents or materials to be provided by one party to the other, the Owner and the Design-Builder shall agree in writing on the specific conditions governing the format thereof, including any special limitations or licenses not otherwise provided in the Design-Build Documents.

§ A.1,6.4 If this Agreement is terminated for cause by the Owner, each of the Design-Builder's design professionals, including the Architect, shall be contractually required to convey to the Owner a non-exclusive license to use that design professional's Instruments of Service for the completion, use and maintenance of the Project, conditioned upon the Owner's written notice to that design professional of the Owner's assumption of the Design-Builder's contractual duties and obligations to that design professional and payment to that design professional of all amounts due to that design professional and its consultants. If the Owner does not assume the remaining duties and obligations of the Design-Builder to that design professional under this Agreement, then the Owner shall indemnify and hold harmless that design professional from ail claims and any expense, including legal fees, which that design professional shall thereafter incur by reason of the Owner's use of such Instruments of Service.

§ A.1.6.5 Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section A.1.6.1.

ARTICLE A.2 OWNER

§ A.2.1 GENERAL

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule submitted to the Owner.

§ A.2.1.2 The Owner shall furnish to the Design-Builder within 15 days after receipt of a written request information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1. The Owner shall furnish all required information and services and shall render decisions with reasonable promptness to avoid delay in the Project Schedule. The Design/ Builder shall be entitled to rely upon the completeness and accuracy of the information and documentation provided by the Owner, Any other information or services relevant to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.

§ A.2.2.2. Owner and Design/Builder hereby acknowledge that Owner and Duke Realty Ohio, an Indiana general partnership, an affiliate of Disign/Buildeer ("DRO") are simultaneously herewith executing a Real Estate Purchase Agreement (the "Purchaser Agreement") for the purchase by Owner of the site upon which the Project is to be located (the "Site") . Accordingly, DRO shall provide Design/Builder site information identified within this paragraph. DRO shall furnish a legal description and a certified land survey of the Project site, giving, as applicable, grades and lines of streets, alleys, payments and adjoining property; rights of way restrictions, easements, encroachments, zoning and/deed restrictions, elevations, and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements, and trees; and full information concerning available services and utility lines, both public and private above and below grade, including inverts and depths. DRO shall disclose to the extent known the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or inechanical system's chemical air and water pollution, hazardous materials, or other environmental and subsurface conditions. DRO shall disclose to Design/Builder all information known to DRO regarding the presence of pollutants at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections, Except for permits and fees which are the responsibility of the Design/Builder as provided in the Preliminary Design Documents the Owner shall and pay for all necessary approvals easements assessments, and charges required for construction use or occupancy the Project.

§ A.2.2.6 The services, information, surveys and reports required to be provided by the Owner under .Section A,2.2. shall be furnished at the Owner's expense, and the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, provided further that in the event that the Design-Builder has performed any work or incurred any costs prior to receipt of the Owner's written notice based upon the Design-Build Documents, the Design-Builder shall be entitled to a Change Order that adjusts the Contract Sum and/or the Contract Time for additional work performed and/or changes to the work as a result of the Owner's written notice.

§ A.2.2.7 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ A.2.2.8 The Owner shall, at the request of the Design-Builder, prior to execution of the Design-Build Contract and promptly upon request thereafter, furnish to the Design-Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Design-Build Documents.

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 The Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build .Documents to be provided by the Design-Builder, for subsoil, air and water conditions when such services-are deemed reasonably necessary by the Design-Builder to properly carry out the design services; provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§A.2.2.11

$ A.2.3 OWNER REVIEW AND INSPECTION

§ A.2.3.1 The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating-instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

§ A.2.3.2 Upon review of the design documents, construction documents, or other submittals required by the Design-Build Documents, the Owner shall take one of the following actions:

.1 Determine that the documents or submittals are in conformance with the Design-Build Documents and approve them.

.2 Determine that the documents or submittals are in conformance with the Design-Build Documents but request changes in the documents or submittals which shall be implemented by a Change in the Work.

.3 Determine that the documents or submittals are not in conformity with the Design-Build Documents and reject them.

.4 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them by implementing a Change in the Work.

.5 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them and request changes in the documents or submittals which shall be implemented by a Change in the Work.

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding the Owner's responsibility under Section A.2.3.2, the Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner or. b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents. Minutes of design meetings showing discussion of the deviation shall be a sufficient writing.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3,3.7.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner way reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A, 13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builder agree to in writing.

§ A.2.3.9 The Owner shall conduct inspections to determine whether the Owner agrees with the Design-Builder's stated date or dates of Substantial Completion and the date of final completion.

§ A.2.4 OWNER'S RIGHT TO STOP WORK

§A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A. 12.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3.

§ A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Design-Builder a second written notice to correct such deficiencies within a three-day period. If the

Design-Builder within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable, cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE A.3 DESIGN-BUILDER

§A.3.1 GENERAL

§ A.3.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder is an entity legally permitted to do business as a design-builder in the location where the Project is located. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions. The Owner understands and agrees that the services performed by the Design-Builder's Architect and the Design-Builder's other design professionals and consultants are undertaken and performed in the sole interest of and for the exclusive benefit of the Design-Builder.

§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and Financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's written request.

§ A.3.2.3 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities. including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing, including minutes of design meetings with the Owner, Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall;

.1 be consistent with the approved design documents;

.2 provide information for the use of those in the building trades; and

.3 include documents customarily required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the Owner periodically to review progress of the design and construction documents and changes and clarifications in the drawings, specifications and other documents.

§ &.3.2.8 Upon She Owner's written approval of construction documents, the Design-Builder, wish the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9

§ A.3.2.10 If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation as least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

§ A.3.3 CONSTRUCTION

§.A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents, except as otherwise agreed, The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the tirne of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related **to** systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Builder shall keep the. Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques. sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without

acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

§ A.3.3.8 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ A.3.4.2 When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the Owner and, if appropriate, in accordance with a Change Order.

§ A.3.4.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ A.3.5 WARRANTY

§ A.3.5.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from detects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents, Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§A.3.6 TAXES

§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

§A.3.7 PERMITS, FEES AND NOTICES

§ A.3.7.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ A.3.7.3 It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rales and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ A.3.8 ALLOWANCES

§ A.3.8.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to which the Design-Builder has reasonable objection.

§ A.3.8.2 Unless otherwise provided in the Design-Build Documents:

.1 allowances shall cover the Cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Design-Builder's costs for unloading and handling at the sits, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section A.3.8.2.1 and (2) changes in Design-Builder's costs under Section A.3.8.2.2.

(Paragraph deleted)

§ A.3.9 DESIGN-BUILDER'S SCHEDULE

(Paragraphs deleted)

§ A.3.9.1 The Design-Builder, and the Owner have agreed to the design and construction phase schedule attached to the Agreement as Exhibit B (the "Project Schedule').

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

§ A.3.9.3 The Design-Builder shall perform the Work in accordance with the Project Schedule.

§ A 3.10 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of (the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work.

§ A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ A.3.11.6 By approving and submitting Shop Drawings. Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

§ A.3.12 USE OF SITE

§ A.3.12.1 The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ A.3.13 CUTTING AND PATCHING

§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ A.3.13.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ A.3.14 CLEANING UP

§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

§ A.3.15 ACCESS TO WORK

§A.3.15.1 The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

§ A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS

§ A.3.16.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

§ A.3.17 INDEMNIFICATION

§A 3.17.1 To the fullest extent provided by law the Owner and the Design/Builder shall indemnify and hold harmless each other and their respective agents, employess, shareholders, members, partners, officers and directors, from and against any and all claims, damages, losses, and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of the Work, provided that such claim, damage loss or expenses is attributable to bodily injury sickness disease or death or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the indemnifying party or any person directly employed by such party or anyone whose acts such party may be liable and except for any matters to which the waiver of subrogation as more fully stated herein applies, regardless of whether such claim, damage, loss or expense, is caused in part by a part to be indemnified hereunder. The Owner and the Design/Builder waive all rights against each other and their design professionals and Subcontractors for damages caused by perils covered by insurance under Article A.11 except such rights as they may have to the proceeds of such insurance. The Design/Builder shall require similar waivers from its design professionals and Subcontractors. The Owner shall require similar waivers from its design professionals and separate contractors.

§ A.3.17.2 In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Design-Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, (The indemnification obligation under Section A3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the

Architect or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts,

ARTICLE A.4 DISPUTE RESOLUTION**§A 4.1** CLAIMS AND DISPUTES

§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party.

§ A.4.1.3 Continuing Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A. 14, The Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, an equitable adjustment in the Contract Sum or Contract Time, or both, shall be made. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Design-Build Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Design-Builder cannot agree on an adjustment in the Contract Sum or Contract Tittle, the adjustment shall proceed pursuant to Section A.4.2.

§ A.4.1.5 Claims for Additional Cost. If the Design-Builder wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A. 10.6.

§ A.4.1.6 If the Design-Buldier believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop- the Work where the Design-Builder was not at fault, (2) a written, order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Design-Build Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, Claim shall be filed in accordance with this Section A.4.I.

§ A.4.1.7 Claims for Additional Time

§ A.4.1.7.1 If the Design-Builder wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ A.4.1.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ A.4.1.8 Injury or Damage to Person or Property. If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally

responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery, The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ A.4.1.9 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause .substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ A.4.1.10 Claims for Consequential Damages. Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A. 14, except paragraph 14.4. Nothing contained in this Section A. 4.1.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ A.4.1.11 If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sura or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A,4.1,

§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

(Paragraph deleted)

§ A.4.2.1 If a dispute arises out of or relates to the Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions between the parties' representatives who have final authority to settle the dispute. If the parties' representatives are not able to promptly settle the dispute. the executives of the parties, who shall have the authority to settle the dispute, shall meet within twenty-one (21) days after the dispute first arises. If the dispute is not settled within seven (7) days from the referral of the dispute to the parties' executives, the parties shall submit the dispute to mediation in accordance with paragraph 4.2.

§ A.4.2.2

§ A.4.2.3

(Paragraphs deleted)

§ A.4.2.4 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If she Claim relates to a possibility of a Design-Builder's default, the Owner nay, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ A.4.2.5 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to initial resolution of the Claim.

§ A.4.3 MEDIATION

§ A.4.3.1 Any Claim arising out of or related to the Design-Build Contract, except those waived as provided for in Sections A.4.1.10, A.9.1.0.4 and A.9.10.5, shall, after initial decision of the Claim or 30 days after submission of the

Claim for initial decision, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution proceedings but, in such event, mediation shall proceed in advance thereof or of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed tor a longer period by agreement of the parties or court order.

§ A.4.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements readed in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§A.4.4 ARBITRATION

§ A.4.4.1 Claims, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, for which initial decisions have not become final and binding, and which have not been resolved by mediation but which arc subject to arbitration pursuant to Sections 6.2 and 6.3 of the Agreement or elsewhere in the Design-Build Documents, shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association.

§ A.4.4.2 A demand for arbitration may be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section A. 13.6.

§ A.4.4.3 An arbitration pursuant to this Section A.4.4 may be joined with an arbitration involving common issues of law or fact between the Owner or Design-Builder and any person or entity with whom the Owner or Design-Builder has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder. No other arbitration arising out of or relating to the Design-Build Contract shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to the Design-Build Contract or not a party to an agreement with the Owner or Design-Builder, except by written consent containing a specific reference to the Design-Build Contract signed by the Owner and Design-Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duty consented to by the parties to the Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ A.4.4.4 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ A.4.4.5 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE A.5 AWARD OF CONTRACTS

§ A.5.1 Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. In order to achieve the schedule to which the Owner has agreed, the Design/Builder may commence work with the entities that it has selected and shall provide the Owner with the list of persons or entities described above. Should the Owner object to any such person or entity, the Owner shall advise the Design/Builder promptly of the Owner's objection in writing. To the extent.

practicable and cosistent with the need to meet the schedule approved by the Owner, the Desigin/Builder shall provide the Owner with a list of persons or entities proposed to perform the Work including allowance work, prior to the Design/Builder entering into a contract with such persons or entities. Failure of the Owner to reply shall constitute notice of no reasonable objection.

§ A.5.2 The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

§ A.5.3 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected additional person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person's or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless she Design-Builder has acted promptly and responsively in submitting names as required.

§ A.5.4 The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to .such substitute.

§ A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

.1 assignment is effective only after termination of the Design-Build Contract by the Owner for cause pursuant to Section A. 14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and

.2 assignment is subject to the prior tights of the surety, if any, obligated under bond relating to the Design-Build Contract.

§ A.5.5.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Contractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section
A.4.1.

§ A.6.1.2 The term "separate contractor'' shall mean any contractor retained by the Owner pursuant to Section
A.6.1.1.

§ A.6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so.

§A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ A.6.2.2 If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to properly of the Owner or separate contractors.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

§ A.6.3 OWNER'S RIGHT TO CLEAN UP

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner shall allocate the cost among those responsible.

ARTICLE A.7 CHANGES IN THE WORK

§ A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

§A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- **.1** a change in the Work;
- **.2** the amount of the adjustment, if any, in the Contract Sum; and
- **.3** the extent of the adjustment, if any, in the Contract Time.

§ A.7.2.2 If the Owner requests a proposal for a change in the Work from the Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

§ A.7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES

§ A.7.3.1 A Construction Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Design-Build Contract, order changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ A.7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ A.7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;

.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A. 7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be based on the reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, fifteen percent (15%) markup as the allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:

.1 additional costs of professional services;

.2 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.3 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.4 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;

.5 cose of premiums for all bonds and insurance, permit fees, and sates, use or similar taxes related to the Work; and

§ A.7.3.7.6 additional costs of supervision, field office personnel, and other direct job site, or "General Conditions," costs directly' attributable to the change.

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work, shall be included in Applications for Payment accompanied by a Change Order indicating the parties agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article A. 4.

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

ARTICLE A.8 TIME

§A.B.1 DEFINITIONS

§ A.8.1.1 The Work shall be commenced, and Substantial Completion shall be achieved, by the dates indicated in the Project Schedule. Unless otherwise provided. Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Documents for Substantial Completion of the Work.

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Project Schedule.

(Paragraph deleted)

§ A.8.1.3 The date of Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so the Owner can occupy or utilize the Work for the use indicated by the Design-Build Documents.

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A. 11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, or by other causes which the Owner determines may justify delay , then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ A.8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7.

§ A.8.3.3 This Section A.8.3 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE A.9 PAYMENTS AND COMPLETION

§ A.9.1 CONTRACT SUM

§ A.9.1.1 The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

§ A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 Before the first Application for Payment, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

§ A.9.3 APPLICATIONS FOR PAYMENT

§ A.9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and reflect retainage if provided for in the Design-Build Documents: If required by the Owner, the Design-Builder shall provide a lien waiver in the amount of the Application for Payment and lien waivers from its Contractors for the completed Work. The lien waivers shall be conditional upon payment. The Design -Builder shall be required to submit supporting documentation to reconcile costs and expenses for allowance items listed in Exhibit E.

§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ A.9,3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.9.3.3 The Design-Builder warrants that title to all Work other than Instruments of Service covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

§ A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:

.1 defective Work not remedied;

.2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;

.3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or a separate contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 persistent failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

§ A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ A.9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by Contractors and suppliers shall be held by the Design-Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Design-Builder for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use indicated by the Design-Build Documents.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete.

§ A.9.8.4 In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, if signed by the Owner and the Design-Builder, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion.

§ A.9.8.6 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ A.9.9 PARTIAL OCCUPANCY OR USE

§ A.9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT

(Paragraphs deleted)

§ A.9.10.1 Final Payment, constituting the unpaid balance of sums due the Design-Builder, shall be due and payable upon Substantial Completion. If there remain items of Work to be completed, the Design-Builder and the Owner shall list such items and the Design-Builder shall complete the items within a reasonable time thereafter. The Owner may retain a sum equal one hundred fifty per sent (150%) of the estimated cost of completing any unfinished items, provided that the unfinished items and the estimated cost of completing the unfinished items are listed separately. The Owner shall pay to the Design-Builder, monthly, the amount retained for incomplete items as each of the items is completed.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) will, upon final paymenl, be paid or otherwise satisfied, (2) a certificate evidencing

that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations from payments previously received by the Design-Builder, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner the reasonable cost of moneys that the Owner has paid in connection with the discharge of such lien, including costs and reasonable attorneys' fees. If the Owner has made payments as required by the Design-Build Documents, the Design-Builder shall, within thirty (30) days after filing, cause the removal of any liens filed against the Project by any party performing labor or services or supplying materials in connection with the Work. If the Design-Builder fails to take such action, the Owner may cause the lien to be removed at the Design-Builder's expense.

§ A.9.10.3 If, after the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from;

.1 liens, Claims, security interests or encumbrances arising out of the Design-Build Documents and unsettled;

.2 failure of the Work to comply with the requirements of the Design-Build Documents; or

.3 terms of special warranties required by the Design-Build Documents.

§ A.9.10.5 Acceptance of final payment by the Design-Builder, a Contractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by thai payee as unsettled at the time of final Application for Payment.

ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder and its Contractors shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

§ A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder and its Contractors shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A. 10.2.1.2 and A. 10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections A. 10.2.1.2 and A. 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents,

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner.

§ A.10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the Owner and Design-Builder. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article A.7.

§ A.10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them from and against Claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance exists on site as of the date of the Agreement, is not disclosed in the Design-Build Documents and presents the risk of bodily injury or death as described in Section A.10.3.1 and has not been rendered harmless, provided that such Claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) to the extent that such damage, loss or expense is not due to the negligence of the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them.

§ A.10.4 The Owner shall not be responsible under Section A. 10.3 for materials and substances brought to the site by the Design-Builder unless such materials or substances were required by the Design-Build Documents.

§ A.10.5 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A. 11.

§ A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Design-Builder from claims set forth below that may arise out of or result from the Design-Builder's operations under the Design-Build Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, by a Contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

.1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;

.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder's employees;

.4 claims for damages insured by usual personal injury liability coverage;

.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible properly, including loss of use resulting therefrom;

.6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 claims for bodily injury or property damage arising out of completed operations; and

.8 claims involving contractual liability insurance applicable to the Design-Builder's obligations under Section A.3.17.

§ A.11.2.2 The insurance required by Section A.11.2.1 shall be written for not less than limits of liability specified in the Design-Build Documents or required by law, whichever coverage is greater. The insurers must have a minimum AM Best rating of AVII. All insurance procured or maintained by the Design-Builder shall be primary. Any insurance maintained by the Owner shall be considered excess and non-contributory. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ A.11.2.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section A.11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. The Certificates for the commercial general liability, automobile liability and any umbrella or excess liability policies shall name the Owner as additional insured. The additional insured endorsement shall state that coverage is afforded the additional insured as primary and non-contributory. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section A.9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness in accordance with the Design-Builder's information and belief.

§ A.11.2.4 The Design-Builder shall cause its Contractors to procure insurance satisfying the requirements of this Article and naming the Owner as additional insured under their commercial general liability, automobile liability, and any umbrella or excess liability policies.

§ A.11.3 OWNER'S LIABILITY INSURANCE

§ A.11.3.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ A.11.4 PROPERTY INSURANCE

§ A.11.4.1 Unless otherwise provided, the Design-Builder shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Design-Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deduclibles. Such property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner. Design-Builder, Contractors and Subcontractors in the Project.

§ A.11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder's services and expenses required as a result of such insured loss.

§ A.11.4.1.2 If the Owner is damaged by the failure or neglect of the Design-Builder to purchase or maintain insurance as described above then the Design-Builder shall bear all reasonable costs properly attributable thereto.

§ A.11.4.1.3 Intentially omitted.

§ A.11.4.1.4 This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.

§ A.11.4.1.5 Partial occupancy or use in accordance with Section A.9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use, by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ A.11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Design-Build Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ A.11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder, Architect, the Design-Builder's other design professionals, if any, Contractors and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

§ A.11.4.4 If the Design-Builder requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Design-Builder by appropriate Change Order.

§ A.11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section A.11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ A.11.4.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section A.11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire and that its limits will not be reduced until at least 30 days' prior written notice has been given to the Design-Builder.

§ A.11.4.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against each other and any of their consultants, separate contractors described in Section A.6.1, if any, Contractors, Subcontractors, agents and employees, each of the other, and any of their contractors, subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section A.6.1, if any, and the Contractors, Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though the person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ A.11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section A.11.4.10. The Design-Builder shall pay Contractors their just shares of insurance proceeds received by the Design-Builder, and, by appropriate agreements, written where legally required for validity, shall require Contractors to make payments to their Subcontractors in similar manner.

§ A.11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Design-Build Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article A.7.

§ A.11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers only with the Design-Builder's written consent. The Owner as fiduciary shall, in the case of a decision or award, make settlement with insurers in accordance with directions of a decision or award. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ A.11.5 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.5.1 The Owner shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract. The Owner has not requested that the Design/Builder provide such bonds. Should the Owner request payment and performance bonds, then the Design/Builder shall be entitled to an increase in the Contract Sum for the costs of procuring the bond.

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

§ A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If

such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

§ A.12.2 CORRECTION OF WORK

§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5. The Design-Builder's warranty excludes defects or damage caused by (1) abuse, modification, or improper maintenance or operation by persons other than Design-Builder's Contractors, or others for whom Design-Builder is responsible, and (2) normal wear and tear under normal usage.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 After timely notice to the Design-Builder of the existence of Work not in accordance with the requirements of the Design-Build Documents and after the Design-Builder has the opportunity to cure or correct the non-conforming work, if the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction in which case the Contract Sum will be equitably adjusted by Change Order.

ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 GOVERNING LAW

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the piace where the Project is located.

§ A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A. 13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

§ A.13.2.2 The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ A.13.3 WRITTEN NOTICE

§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice, or if sent by facsimile with confirmed receipt, or electronic transmission with a hard-copy delivered within seven (7) days after the transmission.

§ A.13.4 RIGHTS AND REMEDIES

§ A.13.4.1 Duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Contract Sum includes the costs for testing for soils, concrete and asphalt. If the Owner requests any tests in addition to such tests and tests required by public authorities havinig jurisdiction, the Contract Sum shall be increased by the cost of the testing and the Design/Builder may request additional time, if the testing impacts the schedule.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A. 13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ A.13.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ A.13.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ A.13.6.1 As between the Owner and Design-Builder:

.1 **Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

.2 **Between Substantial Completion and Final Application for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Application for Payment; and

.3 **After Final Application for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design-Builder pursuant to any Warranty provided under Section A.3.5, the date of any correction of the Work or failure to correct the Work by the Design-Builder under Section A. 12.2, or the dale of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or Owner, whichever occurs last.

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT

§A.14.1 TERMINATION BY THE DESIGN-BUILDER

§ A.14.1.1 The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

.1 issuance of an order of a court or other public authority having jurisdiction which requires alt Work to be stopped;

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

.3 the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or

.4 the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8.

§ A.14.1.2 The Design-Builder may terminate the Design-Build Contract if, through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner, as described in Section A.14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ A.14.1.4 If the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-Builder because the Owner has persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-

Builder may, upon seven additional days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner as provided in Section A.14.1.3.

§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ A.14.2.1 The Owner may terminate the Design-Build Contract if the Design-Builder:

.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and the Architect and Contractors;

.3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or

.4 otherwise is guilty of substantial breach of a provision of the Design-Build Documents.

§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

.1 take possession of the site and of all materials and equipmentpurchased for the Project;

.2 accept assignment of contracts pursuant to Section A.5.5.1; and

.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ A.14.2.3 When the Owner terminates the Design-Build Contract for one of the reasons stated in Section A.14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ A.14.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ A.14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A. 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ A.14.4.1 The Owner may, at any time, terminate the Design-Build Contract for the Owner's convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

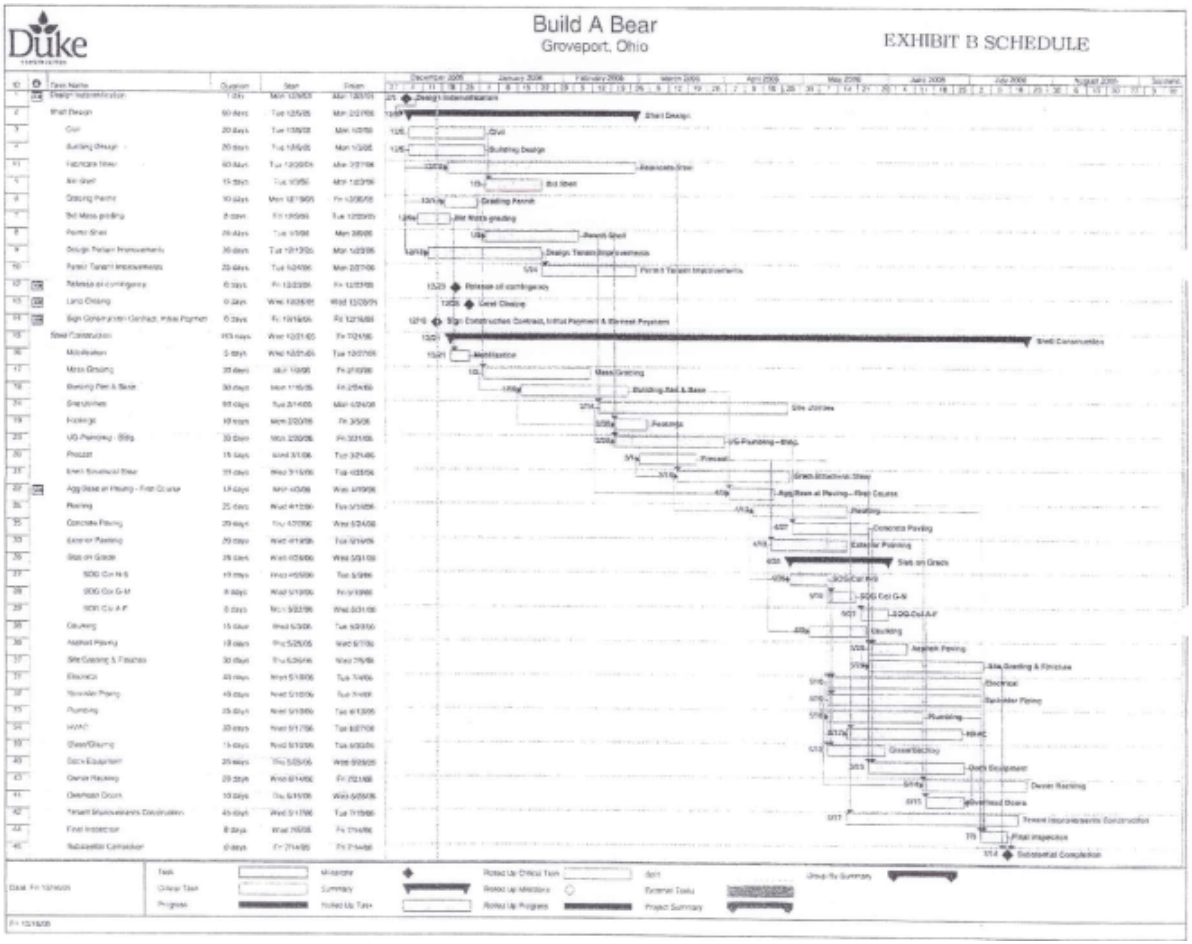
.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.

§ A.14.4.3 In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services not completed. In case of termination for the Owner's convenience after commencement of construction, the Design-Builder shall be entitled to receive payment

for Work executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.


Duke
Build A Bear
Groveport, Ohio
EXHIBIT B SCHEDULE

AIA Document A141™ — 2004 Exhibit C

Insurance and Bonds

for the following PROJECT:
(Name and location or address)

Build-A-Bear Distribution Center
Groveport, Ohio

THE OWNER:
(Name and address)

Build-A-Bear Workshop, Inc.
a Delaware corporation
1954 Innerbelt Business Center Drive
St. Louis, Missouri 63114-5760

THE DESIGN-BUILDER:
(Name and address)

Duke Construction Limited Partnership,
an Indiana limited partenership
5600 Blazer Parkway, Ste. 100
Dublin, Ohio 43017

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

ARTICLE C.1

The Design-Builder shall provide policies of liability insurance as required by the Design-Build Documents as follows:

(Specify changes, if any, to the requirements of the Design-Build Documents, and for each type of insurance identify applicable limits and deductible amounts.)

Worker's Compensation. Employer's Liability covering all employees, volunteers, temporary employees and leased workers.	Statutory limits. $1,000,000 each accident. $1,000,000 disease each employee, and $1,000,000 disease policy limits.
Commercial General Liability for bodily injury and property damage including personal injury, premises/operations, broad form property damage, independent contractors, products and completed operations (with limits of $3,000,000 and coverage for a minimum period of two (2) years after Substantial Completion), and deletion of exclusions pertaining to (1) explosion, collapse, shoring grading and underground property damage hazards, (2) damages or injury arising from defective Work, including costs to repair or replace damaged Work, and (3) contractual liability coverage. (The Commercial General Liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy.)	$3,000,000 combined single limit for bodily injury and property damage.
Commercial Automobile Liability, including owned non-owned and hired car coverages.	$1,000,000 combined single limit for bodily injury and property damage.
Professional Liability, with retroactive coverage for prior acts, to be provided by the Design-Builder's design professionals and not by the Design-Builder.	$1,000,000 annual aggregate limit with not more than a $100,000 deductible.

ARTICLE C.2

Not Applicable (Specify type and penal sum of bonds.)

(Paragraph deleted)

Type	**Penal Sum ($0.00)**
§C.2.1	

Groveport Commerce Center
Groveport, Ohio

EXHIBIT "D-1"

Proposed by Duke Construction
December 16, 2005

PROJECT DESCRIPTION

This project consists of a 350,720 square-foot warehouse distribution facility for Build-A-Bear in Groveport, Ohio. The building is to be located on approximately 22.6 acres in Duke's Groveport Commerce Center.

The building shall consist of a 694' x 504' enveloped by precast concrete wall panels and conventionally framed with structural steel supporting a ballasted EPDM rubber roof system, with internal roof drains. The building shall be designed with docks on one side, and future docks on opposite side of the building with a 33'-8'" clear height.

This project is "design-build" in nature. Since the details that were given to Duke Construction regarding this facility are general in nature, some additional assumptions were generated to arrive at a final cost. These assumptions are described in the following scope of work. Attached is a copy of the preliminary site/floor plan prepared by Duke Construction, dated December 16, 2005 (Exhibit D-2), which is the basis used in preparing this proposal.

An approximate seven (7) month construction schedule is planned plus design and permit processing. See the attached schedule dated December 16, 2005 (Exhibit "B").

The following Outline Specifications are generally described according to the Construction Specification Institute format.

GENERAL REQUIREMENTS

Geotechnical Engineering:

Soil borings will be required for the final design of the building foundations and exterior pavements. In preparing this estimate, it has been assumed that the existing soils will provide suitable bearing capacities, and no special foundations or pavements have been included. Duke will obtain any soil borings as required, and the proposed pavement designs will be verified prior to the final design. (If additional borings indicate that the existing conditions or proposed use require changes to the proposed design, these cost will be itemized and subject to reimbursement by the Tenant/Owner.)

Architectural and Engineering Services:

Duke Construction shall employ the services of architectural and engineering firms licensed in the State of Ohio for the design and engineering of all civil, structural, and architectural drawings and specifications. Duke Construction will oversee and coordinate all aspects of the building design.

Duke Construction will provide all necessary survey work required for building construction.

Quality control for this project will consist of a full-time superintendent along with independent testing technicians to supervise soil compaction, concrete placement, and structural steel connections.

The building will be designed to meet all applicable local and state codes, as well as respective A.D.A. requirements.

All tap fees, capacity fees and permit fees required for the building construction are included.

Duke will provide the installation, maintenance, and consumption costs of all temporary utilities needed for construction. This includes jobsite trailer, telephone, restroom facilities, site access and security, as needed for construction only.

A labor and material guarantee for one (1) year from time of substantial completion will be provided. See Thermal and Moisture division for additional roof and caulking warranties. Duke will provide the client with one copy of all maintenance manuals for the facility. Manuals shall include copies of all record drawings, equipment specifications and all respective warranties.

Builder’s risk, fire and extended coverage insurance for the construction phase of the development will be provided by Duke.

Items that are described as allowances in our base proposal include labor, material and taxes. Overhead and profit on allowance items is included as part of the allowance, unless noted otherwise.

Items that are excluded from our scope of work are performance bond fees and fees for consultants engaged directly by the tenant. Duke reserves the right to obtain open shop and/or merit shop labor to construct this facility. Premiums for prevailing wages or other requirements affecting hourly wages are not included.

SITE WORK

Mass Excavation and Grading:

The site will be cleared to remove any growth such as brush, trees, etc. which has accumulated on site.

Topsoil removal will be required. The topsoil that is stripped will be stockpiled on site for redistribution at a later date. Excess topsoil will be used in creating landscape mounds, berms, etc. Any remaining excess will be buried on the property outside the limits of building areas. No topsoil will be hauled off-site. This proposal includes stripping topsoil across the entire site.

Removal of an existing peat deposit and fill with suitable engineered fill and standard compaction techniques has been included in this proposal.

Mass excavation consists of cut-to-fill to render the site in a positive draining condition. The site shall be engineered to use as much of the excavated material as possible and create a “balanced” condition. Recommendations from the geotechnical engineer will be followed regarding soil conditions. Materials on-site will be utilized for engineered fill using standard compaction techniques. We have not included removal of any excess soils from the site. This proposal excludes special foundations and special slab construction.

It was assumed that extensive site dewatering, other than the peat removal, rock/concrete excavation, or any underground problems would not be an issue and costs for such are not included. In addition, no other contingencies or allowances have been provided for the removal of any hazardous, contaminated, unsuitable soils and/or undercutting. An allowance of $374,000 is included for Winter Conditions in order to perform the work during inclement weather. The winter conditions allowance will include, but not limited to the following cost items : snow removal, soil frost protection, lime/flyash/cement soil treatment for drying and stabilization, temporary building enclosures, temporary heating equipment and fuel consumption, concrete blankets and hot water premium for concrete.

Site Utilities:

All utilities (gas, electric, telephone, water, and sanitary sewer) shall be extended to the building and tied into the respective services. Utilities are assumed to be available at the property lines, and of adequate size and depth to facilitate this building. Storm sewer shall be handled via underground piping and open swales. Off-site detention has already been provided.

Pavements:

The truck apron is planned as 180’-0” wide from the south wall of the dock area and will consist of concrete and heavy-duty asphalt.

Concrete pavement will be provided in front of the dock doors, originating at the dock face and extending out 60 feet at dock locations as shown on the preliminary drawing. The concrete pavement is designed as 8” thick, non-reinforced, 4,000 psi — air entrained concrete set on 8” of compacted granular fill.

“Heavy duty” asphalt sections consists of approximately 8” of 304 sub-base, 3” of 301 asphalt binder course, and 1.5” of 404 asphalt finish course, and will be located in the truck access roads and the truck aprons at the sides of the building.

In the auto parking areas, a “light duty” section, consisting of approximately 6” of 304, 2” of 402, and 1” of 404, will be provided. A total of 170 employee parking spaces are provided.

For all exterior pavements, the specific traffic “load” requirements will need to be verified prior to the final design. If upon review of the information, the pavement design requires modification, the contract amount will be adjusted accordingly.

Sidewalks:

Sidewalks indicated on the site plan shall be constructed with 4” of 4,000 psi concrete unreinforced, set on a 4” granular base. Where the sidewalks meet pavement areas, a 16“x 8” integral curb shall be constructed. This proposal only includes the sidewalks indicated on the attached preliminary site plan.

Patio:

1,600 square foot concrete patio with a 200 square foot canvas awning. Includes 2’ masonry wall around the patio.

Curbs:

Concrete “perma-curbs” will be installed at the perimeter of the automobile parking areas. This extruded concrete curb will be installed on top of the finish course of 404 asphalt. The entrances to the facility shall receive an extruded 18” deep concrete barrier curb. Reinforcing has not been included for these curbs.

Fencing and Gate:

985 lineal feet of 6’ high, black vinyl coated chain link fence, with two (2) 12’ wide cantilever slide gates. The slide gates shall b electronically operated by a remote push button station.

Landscaping, Irrigation, and Seeding:

General seeding is included in the base proposal. Plant materials, sod, irrigation and installation, including miscellaneous trees, shrubs and ground cover, has been included as a landscaping allowance of $94,044. This allowance includes landscaping design.

Exterior Signage:

An allowance of $5,000 has been included for the installation of an exterior sign. An additional building signage allowance of $20,000 is included These allowances are intended to pay for the sign, foundations, and electric service or lighting (if required).

Termite and Pest Control:

Insect treatment, and pest control are excluded from this proposal.

STRUCTURAL CONCRETE

Foundations:

Building foundations will be spread footings constructed from, 3,000 psi concrete. An allowable bearing capacity 3,500 psf at a depth 36” below finish grade has been assumed. Continuous wall footings and column spread footings shall be poured “rough” and forming of these footings has not been included. No foundation walls have been included. The precast walls will bear directly on the continuous footings.

Floor Slabs:

The Warehouse slab-on-grade will consist of 7” thick — 4,000 psi / 700 Flex concrete floor non-reinforced set on a 5” granular fill bed.

Floor flatness and levelness tolerances shall meet a **Random Traffic Pattern** value of **FF=35 and FL=25** in the following areas; Receiving, Returns, Shipping, and all offices. The Floor flatness F-MIN-60 shall be required in the following areas; Reserve Pallet, Carton Storage and Pallet Flow Storage. Shipping Sorter/Retail Active Area shall meet a **Random**

Traffic Pattern value of **FF=45 and FL=35.** Caulking of construction and control joints has been excluded.

All concrete tests are to be completed by independent testing laboratory per ACI standards and costs are included for such quality control work.

For all interior slabs, any specific racking or other equipment load requirements will need to be verified prior to the final design. If upon review of the information, the slab design requires modification, the contract amount will be adjusted accordingly.

Precast Wall Panels:

Precast wall panels shall be utilized for the building's exterior wall structure. The wall panels will be load-bearing where applicable and will be complete with the necessary reinforcements and embeddments. These panels contain foam insulated cores which provide an R=5 insulating value.

METALS

The building structural system will consist of steel columns, bar joists, joist girders, and roof deck. The roof load design shall meet Ohio Building Code requirements.

The clear height to the underside of the lowest horizontal steel member shall be a minimum of 33'-8" feet. The typical bay spacing shall be 42'-5" x 42'-8" throughout with a 56'-6" end bay and 60'-0" dock bay on south end of building. The building will utilize K braces for wind bracing.

Mezzanine for web operations is included at 170' X 220', with 125 pound per square foot live loading. Office second floor is included at 56' X 106', with 50 psf live load and 20 psf partition load. Support for 2,200lf of conveyor loading at 144plf is included.

Miscellaneous metal items include:

1) Eighty (80) pipe bollards
2) One (1) roof access ladder with safety cage.
3) One (1) drive-in door pipe sills
4) Thirty one (31) pit type dock leveler frames

Metal deck shall be factory finished standard Vulcraft white.

Touch-up painting is excluded.

CARPENTRY

Miscellaneous wood blocking is provided as required for overhead door tracks, roof blocking, and roof curb nailers.

MOISTURE AND THERMAL PROTECTION

Roofing:

The roof system shall be a 0.045, ballasted EPDM roof system with expanded polystyrene insulation for a total R Value = 16.6.

The roof shall carry the manufacturer's 20 year prorated membrane warranty and a 10-year labor and material watertight warranty. The roof shall also have the contractor's 2 year warranty.

This proposal includes the roof flashings and penetrations required for the mechanical and electrical work described in this scope of work.

88 smoke and heat vents 4' X 8' are included.

Caulking:

Elastomeric joint sealant will be installed in the precast wall joints on the interior and the exterior side of panels. Joint sealant will also be provided at all exterior wall penetrations (window, doors, etc.). The exterior joint sealants have a five- (5) year manufacturer's warranty on material and installation.

We have not included interior floor control joint sealants in this proposal.

DOORS, WINDOWS

Windows:

This proposal includes the installation of approximately 960 square-feet of curtain wall system at the main entry. Twenty three (23) 4' X 4' punched windows (approximately 368 square-feet) have been included. The exterior glazing system will consist of 1" thick tinted, thermopane units set in clear or bronze anodized, thermally improved aluminum frames.

The main office entry shall consist of one set of medium stile aluminum double doors with associated hardware. No electronic or special locking devices are included in this proposal.

Doors:

Exterior man doors shall be 3'-0" x 7'-0" hollow metal doors and frames as required for egress per code. This proposal includes Twenty-three (23) exterior egress doors in the warehouse.

Finish hardware is included for the above mentioned egress doors. Special locking or closing devices are excluded.

Overhead Doors:

Thirty one (30) each — 9' x 10' x 24 ga. insulated steel, sectional dock doors with manual operation and weather stripping are included. Each door will have one window.

One (1) 12' x 14' x 24 ga. insulated steel, sectional drive-in door with electric operation, weather stripping and one window is included.

FINISHES

Warehouse Area:

The exterior face of the precast concrete wall panels will be painted with two (2) coat of acrylic textured paint. The paint system shall have a manufacturer's seven (7) year warranty.

Hollow metal doors and frames, and pipe posts to have one (1) coat of primer and two (2) coats of acrylic gloss exterior paint.

Overhead doors are figured to be factory finished to coordinate with building exterior.

Two (2) coatings of Ashford formula floor coating. Epoxy floor coating in the battery charger area.

EQUIPMENT

Dock equipment will be provided as follows:

Dock Levelers:	Thirty (30) total Based on Poweramp CM Series or approved equal Size: 6' x 8' Capacity: 30,000 Ibs, Mechanically operated
Truck Restraints:	Thirty (30) total With restraining capacity of 32,000 pounds.
Dock Bumpers:	Two (2) at each door (4" bumper) for a total of sixty two (60)
Dock Shelters:	Thirty (30) total Size: 9' x 10' with fixed head pad

FURNISHINGS

All furnishings, such as lockers, refrigerators, tables, chairs, cooking appliances, and horizontal blinds shall be provided by the Tenant.

SPECIAL CONSTRUCTION

None.

CONVEYING SYSTEMS

None.

FIRE PROTECTION

Fire Protection system shall include:

Water Connection / Site Underground:

Fire protection service will be by water supply connection to the private underground fire protection piping system for the park. The fire service main is a 10" line that will be reduced to 8" pipe as required to service the building. Underground piping main will terminate inside the building per NFPA — 24, at locations determined by Duke Construction.

Underground Check Valve Assembly:

In complete accordance with local code requirements, an underground check valve and fire department connection will be installed.

Office Areas:

All office areas shall be furnished and installed as part of the finish allowances.

Warehouse Areas:

The warehouse area fire protection system for shall consist of an ESFR sprinkler system based on the following:

1) Brass ESFR K-14 sprinklers installed throughout all exposed structure areas except for the office area.
2) All systems shall be hydraulically designed and installed per NFPA — 13. Warehouse Area ESFR: 12 sprinklers @ 75 PSI

Sprinklers:

Brass ESFR (K-14) in the warehouse area.

Fire Department Hose Connections:

Hose connections have been excluded from this proposal, Once a racking layout is agreed upon, this item will need to be determined and the cost adjusted accordingly.

Fire Pump:

Fire pump is excluded. Site has an independent fire main.

Exclusions:

In rack sprinklers, dry pipe or other chemical based pre-action fire suppression systems, central station fire alarm system and Factory Mutual or other Insurance underwriter's special requirements above what is stated herein are not included.

Plumbing and H.V.A.C.

Warehouse Area HVAC:

The warehouse area shall be heated with gas fired, rooftop mounted 80/20 Make-up-Air units complete with roof curb, disconnect, and thermostat sized to maintain 60°F at 0°F outside.

Office Area HVAC:

All office area HVAC shall be installed as part of the office finish allowance.

Warehouse Plumbing:

A 6" sanitary waste underground main shall enter the building near the dock wall and extend 690' to serve the office, restrooms, and future tenant spaces.

A 2” insulated domestic coldwater overhead main shall run 940’.

Frost-proof exterior hose bibbs shall be provided at the tenant entry and dock area.

Office Area Plumbing:

All office area plumbing shall be installed as part of the tenant finish allowance.

HVAC / Plumbing General

Items listed above are items of major fixtures and equipment. It is the intent of this proposal to provide an operational heating, air conditioning and plumbing systems in accordance to all codes and standard engineering practices. Incidental items such as rigging, low voltage wiring, air balancing, hangers, floor drains, clean outs, backflow preventers, etc. are included in the intent of this proposal even though not listed specifically. All work will be performed in accordance to local codes and applicable engineering standards.

“BAF” fans are included above the mezzanine and dock area.

ELECTRICAL

Electrical scope of work shall include:

Duke Base Building Shell

Primary

- (2) 5” SCH, 40 conduit (850’)
- (850’) Trenching and backfill for utility primary utility conduits
- Utility transformer pad
- Utility manhole

Telephone

- (300’) (2) 4” SCH. 40 PVC empty conduits and trenching/ backfill from building to property line at two locations
- (1) 4x8 telephone backboard with grounding and dedicated 20amp 120vac. circuit.

Secondary

- (1) 400 Amp 277/480V, 3PH, 4W cable and duct systems
- Trenching and backfill
- (1) Utility metering and service grounds
- (1) 400amp 480vac., 3-phase service disconnect

Distribution

- (2) 400amp 480/277V, 3PH, 4W panel boards to serve Warehouse equipment and lighting

HVAC Equipment Connections

- (4) 50 HP. Make-up Air Unit connections
- (4) RTU receptacles

Warehouse Lighting

- (330) 2x4 fluorescent electronic ballast with T5 lamps to meet 30 foot-candles average maintained in warehouse based on an open floor plan. (Breaker switched).
- (30) Exit signs with self contained battery, at each perimeter exit door. Emergency/exit lighting installed per code, based on an un-occupied space.

Site Lighting & Exterior Building Mounted Lighting

- (2) 1-head 400W metal halide pole assemblies complete with 24“dla. 36” above grade pole bases in the employee parking area.
- (4) 2-head 400W metal halide pole assemblies complete with 24“dia. 36” above grade pole bases in the employee parking area.
- (30) 400W metal halide shoe-box type wall mounted fixtures around perimeter of building
- Lighting controlled by time clock and photocell
- Canopy lighting
- 175watt ground mounted floods for the sign and flagpoles

Fire Alarm Monitoring System

- (1) Addressable fire alarm monitoring panel
- (4) Smoke duct detectors
- Flow and tamper switch monitoring
- Monitoring is not included

Build A Bear Tenant Improvements

Site Lighting & Exterior Building Mounted Lighting

- (7) 1-head 400W metal halide pole assemblies complete with 24“dia. 36” above grade pole bases located in the Trailer Storage

Secondary

- (1) 4000 Amp 277/480V, 3PH, 4W cable and duct systems
- Trenching and backfill
- (1) Utility metering and service ground

Distribution

- (1) 4000amp main 480vac. 3-phase 4-wire switchboard
- (10) 400amp 480/277V, 3PH, 4W panel boards to serve Warehouse equipment, Warehouse lighting, Step-down transformers

- (6) Step-down transformer to serve dock power, office and misc. warehouse 120vac. power
- (7) 208/120V, 3PH, 4W panel board to service miscellaneous power loads
- See *each specialty area for additional distribution*

HVAC Equipment Connections

- (2) 15ton RTU connection (Office)
- (2) 5ton RTU connection (Office)
- (1) Battery Charger exhaust connection
- (2) Toilet exhaust fan connection
- (20) Office VAV connections

Reserve Shipping, Receiving & Pallet Flow Lighting

- (800) 2x4 fluorescent electronic ballast with T5 lamps to meet 10 foot-candles average maintained in warehouse Reserve Storage, 50fc average maintained in the specialty areas and 30fc. average maintained in the main warehouse corridors
- 12-pole lighting contactors to be controlled by the building management system

Emergency Egress Lighting

- (24) Exit signs
- Wiring to the fluorescent hi-bays in the established egress aisles to meet 1fc. minimum.
- (1) 50amp 480vac. Transfer Switch and 60amp 480vac. panel board for egress lighting

Mezzanine Lighting

- (700) 4’-0” T5 2- lamp electronic fluorescent strip fixtures
- (2) 8-pole Lighting contactors with single point lighting control

Battery Charging Area

- (60) 20amp 480vac. battery charger connections
- (2) 600amp 480vac. underground feeder
- (5) 600amp 480/277V, 3PH, 4W panel boards to serve 480vac.battery charger

Maintenance Area

- (10) 15amp 120vac. receptacles
- (3) 30amp 208vac. receptacle
- (1) 480vac, 30amp disconnect

Dock Power, Column Receptacles & Misc. PA & RF Receptacles

- (29) 15amp 120vac. dock receptacles
- (29) Dock light units
- (12) 15amp 120vac. receptacles for RF and PA systems
- (40) 15amp 120vac. column receptacles
- (29) Dock restraints connections (restraints provided by others)
- (29) Dock leveler connections
- (2) 120vac. overhead door connections
- Duplex receptacles and voice/data rough-in is not included see below allowance
- The above items are to be fed the low voltage distribution defined under the Distribution Section.

Conveyor Power

- (3) 200amp 480vac. underground feeder
- (2) 300amp 480vac. underground feeder
- (1)125amp 480vac. underground trash conveyor connection

Miscellaneous Equipment connections

- (1) Baler
- (1) Compactor
- (3) Shrink Wrap Machines

Generator & UPS System

- 240kw Kohler diesel 480/277vac. 3-phase, 4-wire generator with sub base fuel tank sized to run 24hr at full-load
- Remote annuciator located at receptionist
- Install owner furnished 30KVA UPS System

Paging System

- Warehouse and office paging system, single zone. Warehouse speakers to be mounted underside of bar joist

Voice Data Conduit System

- Not included

ALLOWANCES

The following is a summary of the allowances included for this project:

Winter Conditions:	$ 374,000
Landscaping:	$ 94,440
Exterior Signage:	$ 5,000
Building Signage:	$ 20,000
Office Allowance(15,000sf x $35/sf):	$ 525,000

QUALIFICATIONS & EXCLUSIONS

1) Factory Mutual or other insurance requirements are excluded.

2) Due to the recent escalation in the costs of building materials, this proposal and pricing only remains good until December 31, 2005. If awarded the Contract for this project after that time, Duke Construction will need to verify pricing with all subcontractors and vendors for labor and material rates and adjust the price accordingly.

3) The Schedule dated December 5, 2005 assumes many critical milestones are met in the Project Delivery for Contract Agreements, Project Design Development, Owner Review and Approvals, Zoning, Building Permitting and Work by Others. Delays in any of these items could compromise the completion dates by at least a day for day basis.

4) We have included construction costs and schedule time to accommodate reasonable Winter Conditions. However, severe weather conditions may dictate schedule delays or may require excessive construction costs, that are not included, to overcome the delays.

5) The site will be designed to balance (no import or export of subgrade material is included) and all on-site material is assumed to be suitable for fill areas. All existing topsoil shall remain on-site and will be reused in landscaped areas and earth berms.

6) Rock excavation using standard ripping techniques is included as part of the base proposal. Blasting, rock sawing, or other special excavation techniques are excluded and will be paid via a Change Order to the Contract.

7) We assume that there are no on site contaminates or hazardous materials, so remediation for these are not included.

8) Air compressors, air piping or other process piping is excluded..

9) Painting of mechanical and electrical piping is excluded.

10) Installation of tenant equipment is excluded.

11) Flexible wiring systems will be utilized in concealed spaces and above the bottom cord of the bar joists in the warehouse areas.

12) Aluminum conductors will be utilized for feeders of 100 amps or larger with the exception of feeders associated with mechanization panels.

13) CCTV, SECURITY AND DOOR CONTACTS not included.

EXHIBIT D-2
SITE PLAN

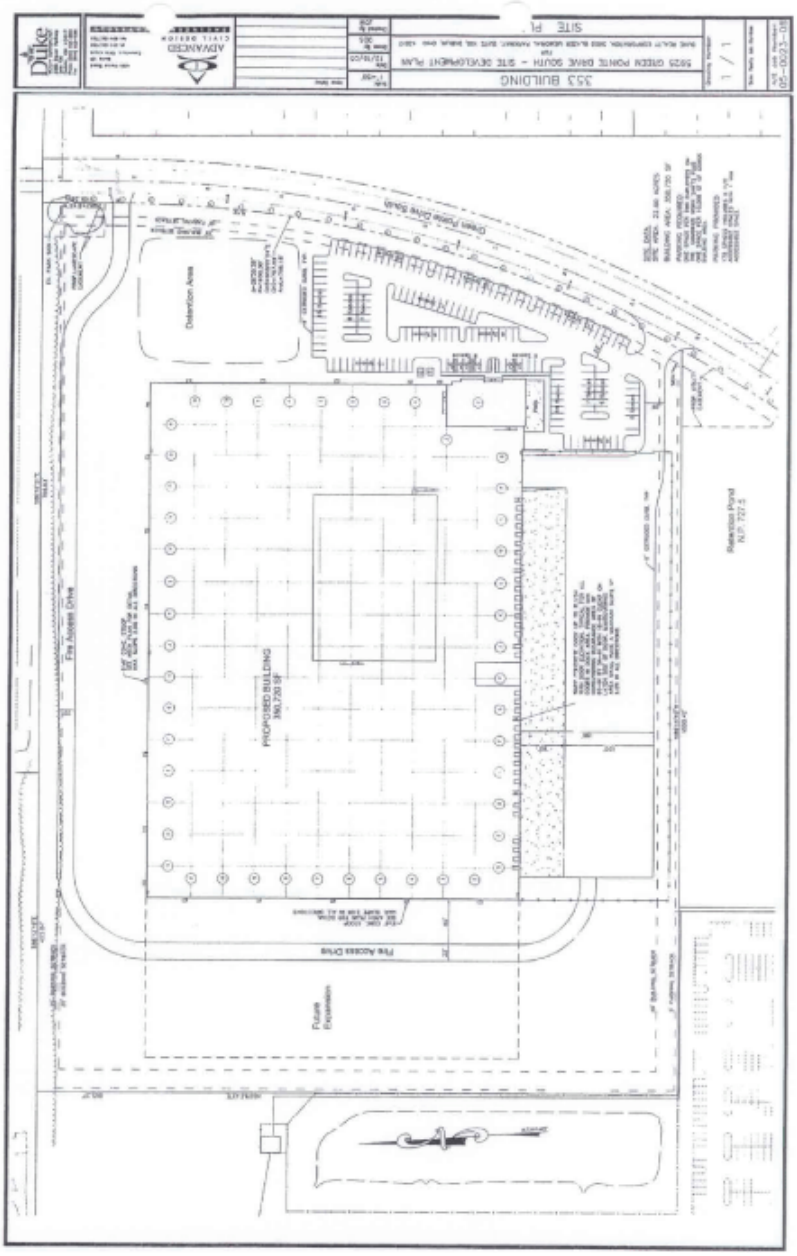


EXHIBIT E

Build-A-Bear Distribution Center

ALLOWANCES

Winter Conditions	$ 374,000
Landscaping	$ 94,440
Exterior Signage	$ 5,000
Building Signage	$ 20,000
Office Allowance (15,000sf x $35/sf)	$ 525,000

EXHIBIT F

Build-A-Bear Distribution Center

PEAT REMEDIATION

The Design-Builder shall commence removal of peat at the site with the approval and consent of the Owner. Peat will be stripped and stockpiled on site for redistribution at a later date. Suitable soils from other locations on the site will be placed in the areas from which peat is removed to return that portion of the site to the elevation existing prior to the relocation of the removal of the peat. All of these activities shall be considered the Peat Remediation. The Design-Builder shall be responsible for the removal of peat at the Project site and shall not tender any change order request to the Owner for payment for any additional costs incurred or time expended in connection with removing, stripping, stockpiling, and relocating peat or for any additional costs incurred in placing suitable soils in the areas in which the peat is removed or stripped.

Owner and Design-Builder hereby acknowledge that contemporaneously with the execution of this Agreement, the Owner and Duke Realty Ohio, an Indiana general partnership, an affiliate of Design-Builder ("DRO") are executing a Real Estate Purchase Agreement (the "Purchase Agreement") for the purchase by Owner of the site upon which the Project is to be located (the "Site"). As of December 16, 2005, the Owner has not had the opportunity to review certain environmental information ("Environmental Report") that DRO is obligated to furnish to the Owner pursuant to the Purchase Agreement.

Should the Owner terminate or fail to consummate the Real Estate Purchase Agreement for any reason other than as a result of adverse information contained in the Environmental Report or as the result of a default of the Design-Builder under the Agreement, the Owner agrees to pay for the reasonable and necessary costs expended and incurred in the Peat Remediation. The Peat Remediation costs are in addition to those costs included in the Indemnification Agreement dated December 1, 2005 executed by Barry Erdos on behalf of the Owner. The Design-Builder shall mitigate its damages.

Exhibit G

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Design / Build Mechanical

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slawrence@denier.com

Design / Build Electrical

Exhibit 10.36

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") is executed as of the 19th day of December, 2005 (the "Execution Date"), by DUKE REALTY Ohio, an Indiana general partnership ("Seller"), and BUILD-A-BEAR WORKSHOP, INC., a Delaware corporation ("Buyer").

WITNESSETH:

1. Basic Terms. The following constitute the "Basic Terms" of this Agreement.

A. Real Estate: The real estate and other property located in the Village of Groveport, Franklin County, Ohio, consisting of approximately 22.6 acres and more particularly described in the legal description attached hereto as **Exhibit A** (the "Land"), together with (i) all right, title and interest of Seller in any easements, rights-of-way or other interests in, on, under or to, any land, highway, street, road, right-of-way or avenue, open or proposed, in, on, under, across, in front of, abutting or adjoining the Land, and all right, title and interest of Seller in and to any awards for damage thereto by reason of a change of grade thereof, and (ii) all improvements situated thereon, and (iii) all accessions, rights, privileges, appurtenances and all the estate and rights of Seller in and to the foregoing or otherwise appertaining to any of the property described in this paragraph (hereinafter collectively referred to as the "Real Estate").

B. Purchase Price: $2,216,000.

C. Earnest Money: $140,000.

D. Closing Date: December 28, 2005; provided, however, in the event that the Environmental Report is no delivered to Buyer by December 22, 2005, then the Closing Date shall be extended by one (1) day for each day after December 22, 2005 that the Environmental Report is actually delivered to Buyer hereunder.

E. Brokers: Duke Realty Services Limited Partnership for Seller and none for Buyer.

F. Addresses for Notice:

Seller:	Duke Realty Ohio Attn: Art Makris 5600 Blazer Parkway, Suite 100 Dublin, Ohio 43017 Fax No.: (614) 932-6290
Copy to:	Duke Realty Corporation Attn: Jodie L. Edminster 600 East 96th Street, Suite 100 Indianapolis, IN 46240 Fax No.: (317) 808-6790
Buyer:	Build-A-Bear Workshop, Inc. Attn: Dennis Sheldon 1954 Innerbelt Business Center Drive St. Louis, MO 63114 Fax No.: (314) 423-8188
Copy to:	Victor H. Lewitt, Esq. Blumenfeld, Kaplan & Sandweiss, P.C. 168 N. Meramec Avenue, Suite 400 St. Louis, MO 63105 Fax No.: (314) 863-9388

2. Purchase and Sale. Seller agrees to sell, and Buyer agrees to purchase, the Real Estate for the price and subject to the Basic Terms and all the provisions hereinafter set forth.

3. Payment of Purchase Price. The Purchase Price shall be paid to Seller as follows:

(a) Upon execution of this Agreement by both Buyer and Seller, Buyer shall deposit the Earnest Money with the Title Company (as defined in Paragraph 6 below). Such Earnest Money shall be held, applied, returned or retained in accordance with the terms of this Agreement.

(b) The remainder of the Purchase Price, plus or minus any prorations and adjustments made pursuant to this Agreement, shall be paid by Buyer by wire transfer or other immediately available funds at the Closing.

4. Escrow Terms. Upon receipt of the Earnest Money from Buyer, Title Company shall invest the Earnest Money in an interest bearing, federally insured account with a national bank or federal savings bank. All interest on the Earnest Money shall be applied to the Purchase Price, or if the Closing does not occur due to no default of Seller, remitted to Seller no later than December 30. 2005, as liquidated damages and in consideration of that certain indemnification agreement by and between Duke Construction Limited Partnership and Build-A-Bear Retail Management, Inc., dated December 1, 2005..

5. Inspection Period. At any time after the Execution Date, Buyer and its agents shall have the right to enter upon the Real Estate and make all engineering, environmental and other tests and inspections deemed necessary by Buyer to satisfy Buyer as to the condition or suitability of the Real Estate. All such tests shall be at Buyer's cost and expense. Buyer agrees to immediately repair any and all damage to the Real Estate arising or resulting from such inspection by Buyer or its agents, and Buyer shall defend, indemnify and hold Seller harmless from all claims arising or resulting from such inspection or from the entry of Buyer or its agents onto the Real Estate for any purpose. The provisions of this Paragraph 5 shall survive Closing or the termination of this Agreement.

This Agreement and the obligations of Buyer hereunder are specifically made contingent upon the following contingency for the benefit of Buyer:

(a) Receipt by Buyer, by December 22, 2005, from engineers and professional environmental consultants of its choice, of reports, analyses, and/or written certifications (the "Environmental Report") satisfactory to Buyer in its sole discretion that no Hazardous Materials (as hereinafter defined) exist on or under the Real Estate, and the Real Estate is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or the environmental conditions on or under the Real Estate , including, without limitation, soil and groundwater conditions. "Hazardous Materials" shall mean (i) substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; (ii) asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid or other fluids containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million; and (iii) any other chemical, material or substance, including, without limitation, petroleum products, by-products and waste, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety of the occupants of the Real Estate, or to the soil or groundwater, including without limitation, any such substances governed by applicable Ohio law. The above contingency set forth in this Section 5 is for the benefit of Buyer and may be waived by Buyer in whole or in part.

Should the contingency set forth in this Section 5 not be satisfied or waived (as evidenced by Buyer's failure to timely terminate the Agreement by written notice to Seller within one day following actual receipt of the Environmental Report) by Buyer within one day following actual receipt of the Environmental Report, , then Buyer shall notify Seller of the non-satisfaction of the above contingency, by written notice, at which time this Agreement will

become null and void (except for those provisions which specifically survive the termination hereof). Should Buyer fail to notify Seller of such non-satisfaction or waiver, then the contingency in this Section 5 shall be deemed satisfied.

6. Title Report and Permitted Exceptions.

A. Seller, at its expense, has, prior to the Execution Date, delivered to Buyer from Stewart Title Agency of Columbus ("Title Company") a binder for an owner's policy of title insurance on the Real Estate (the "Title Commitment") and copies of all recorded documents reflected as exceptions thereon. All exceptions listed on the Title Commitment shall be deemed "Permitted Exceptions" (except for those conditions the Title Company will agree to eliminate upon receipt of an affidavit from Seller, sufficient to delete the standard exceptions, or upon receipt of a survey, and except for any mortgages, deeds of trust or other liens or encumbrances on the Real Estate, all of which are to be released prior to Closing). Seller agrees to pay all Title Company charges for or in connection with the Title Commitment.

B. Buyer's obligation to close under this Agreement is contingent upon the Title Company issuing to Buyer at Closing an ALTA Owner's Policy of Title Insurance (the "Title Policy") in the amount of the Purchase Price and containing no exceptions other than the Permitted Exceptions and current taxes and assessments not yet due and payable. All mortgages, deeds of trust or other liens or encumbrances on the Real Estate shall be released prior to Closing and shall not appear as exceptions to the Title Policy. The standard, preprinted exceptions shall be deleted from the Title Policy. If Buyer is unable to obtain a marked up and signed Title Commitment representing the Title Policy on the Closing Date, Buyer may terminate this Agreement, and the parties shall be released from all further obligations hereunder, except those which specifically survive the termination hereof. Notwithstanding anything to the contrary contained herein, Seller shall, at Closing, pay all premiums and charges, but not endorsement charges, for or in connection with the Title Policy.

7. Survey. Seller has delivered to Buyer a staked boundary survey of the Real Estate (the "Survey") prepared by a registered land surveyor selected by Seller. Buyer, at its expense, may update the Survey at its option (the "Updated Survey"). The Updated Survey shall (a) be completed in accordance with the minimum standard detail requirements for an ALTA/ACSM survey and be certified to Seller, Buyer, Buyer's lender and the Title Company by such surveyor; (b) have one perimeter description of the Real Estate; (c) show all easements, rights-of-way, setback lines, encroachments and other matters affecting the use or development of the Real Estate; and (d) show the acreage of the Real Estate.

8. Cooperation of Seller. Seller shall assist Buyer and its representatives, whenever reasonably requested by Buyer, in obtaining information about the Real Estate, provided that Buyer shall reimburse Seller for any expenses incurred by Seller in connection therewith.

9. Taxes and Assessments. Buyer will assume and agree to pay (i) so much of the real estate taxes and assessments assessed against the Real Estate which first become due and payable during the calendar year in which such closing occurs as shall be allocable to Buyer for the period on and after the Closing, and Seller shall pay the balance of such taxes for such calendar year, using, for Closing purposes, the tax rate and valuation assessment existing at the Closing Date if the applicable tax rate or assessment has not then been determined, and all real estate taxes and assessments first becoming due and payable after the year during which closing occurs. Seller shall pay all real estate taxes not assumed by Buyer. Any taxes and assessments not assumed by Buyer and not paid by Seller at or prior to Closing shall be allowed to Buyer as a credit against the cash payment required on Closing, and Seller shall not be further liable for such taxes or assessments. Seller shall pay any and all transfer taxes imposed by the county, state or municipality in which the Real Estate is located.

10. Representations, Warranties and Covenants by Seller. In order to induce Buyer to purchase the Real Estate, Seller makes the following representations and warranties, which representations and warranties shall survive the Closing for a period of one year hereunder and shall inure to the benefit of Buyer, its successors and permitted assigns, and shall be considered made as of the date hereof and as of the Closing Date:

A. Seller owns good and marketable fee title to the Real Estate and has all requisite power and authority to execute this Agreement and the closing documents described herein.

B. Seller has no actual knowledge of any action, litigation or condemnation proceeding pending in any court or before any governmental agency by any person affecting the Real Estate. If Seller receives actual knowledge of any such proceedings between the date of this Agreement and the Closing Date, Seller shall give Buyer written notice thereof, and thereupon Buyer shall have the right, if there is a materially adverse impact on Buyer's intended use or development of the Real Estate as a result thereof, to terminate this Agreement.

C. To the best of Seller's knowledge, all utility charges for the Real Estate payable by Seller have been paid, and no utility is making any claims for any due or past due statements. To the best of Seller's knowledge, utilities are or will be available to the Real Estate prior to development of the Real Estate, and the Real Estate is zoned properly for Buyer's intended development pursuant to the construction contract ("Construction Contract") to be signed by the parties or their affiliates of even date herewith.

D. To the best of Seller's knowledge, the conveyance of the Real Estate pursuant hereto will not violate any applicable statute, ordinance, governmental restriction or regulation or any private restriction or agreement.

E. To the best of Seller's knowledge, there are no violations of any federal, state, local or other governmental building, zoning, health, safety, platting, subdivision, environmental, or other law, ordinance, regulation, or private restriction affecting the Real Estate.

If Seller receives any such notice of violation between the date of this Agreement and the Closing Date, Seller shall give Buyer written notice thereof, and thereupon Buyer shall have the right, if there is a materially adverse impact on Buyer's intended use or development of the Real Estate as a result thereof, to terminate this Agreement.

F. No notice of any special assessments against the Real Estate has been received by Seller.

G. There are no parties in possession of any portion of the Real Estate as lessees, tenants at sufferance or trespassers.

H. Other than this Agreement, there are no sale contracts, options to purchase, leases, rights of first refusal or other agreements of sale or lease for or affecting the Real Estate.

Buyer may elect to close the transaction described in this Agreement with knowledge of a breach by Seller of one or more of the foregoing representations and warranties without such election constituting a waiver or release by Buyer of any claims due to such breach.

Buyer acknowledges that it has had or will have the opportunity to examine the Real Estate. Seller (or any of its agents or representative) has not made and does not make, and is unwilling to make under this Agreement, any representations as to the physical condition, use or any other matter or thing affecting or related to the Real Estate, except as may be expressly set forth herein. Buyer acknowledges that no such representations have been made, and Buyer agrees to take the Real Estate **"AS IS"**.

11. Damage, Destruction and Eminent Domain. Risk of loss to the Real Estate shall remain in Seller until the Closing Date.

A. If, prior to the Closing Date, the Real Estate or any substantial part thereof is damaged or destroyed by fire, the elements, or by any other cause of whatever nature, Buyer shall have the option to either: (i) terminate this Agreement by written notice delivered to Seller within thirty (30) days after the date Buyer receives written notice from Seller notifying Buyer of such damage; or (ii) proceed to close the transaction contemplated hereunder despite said

destruction or damage to the Real Estate, in which event Seller shall, at Buyer's election, either (x) repair such damage or destruction prior to the Closing, at Seller's sole expense, or (y) reimburse Buyer for the cost of repairing the same by allowing Buyer to deduct such cost from the Purchase Price payable to Seller at the Closing, or (z) assign to Buyer Seller's right to make claim under and receive the proceeds from all policies insuring Seller against any such loss or damage.

B. If, prior to Closing, the Real Estate or any material part thereof shall be taken by eminent domain, Buyer may, at its option, by written notice to Seller, terminate this Agreement.. If, despite said material taking, Buyer elects to proceed to close the transaction contemplated hereunder or if there is less than a material taking, there shall be no reduction in or abatement of the Purchase Price, and Seller shall assign to Buyer all of Seller's right, title and interest in and to any award made or to be made in the condemnation proceeding.

12. Closing. The closing of the purchase and sale of the Real Estate (the "Closing") shall occur at the office of the Title Company or another location selected by both Seller and Buyer on the Closing Date, unless Buyer and Seller shall agree upon a different date for the Closing.

13. Closing Documents. At the Closing, Seller shall execute and deliver to Buyer (a) a limited warranty deed conveying fee simple title to the Real Estate, reserving an easement for signage and landscaping as described in **Exhibit B** attached hereto, and subject to the Permitted Exceptions, to Buyer as required under this Agreement; (b) a vendor's affidavit in a form satisfactory to enable the Title Company to delete the standard printed exceptions from the title policy; (c) a Certification of Nonforeign Status pursuant to Section 1445(b)(2) of the Internal Revenue Code; (d) a Transfer Tax Statement or return, if applicable; (e) a closing statement; (f) an easement (satisfactory in form to both Buyer and Seller) over Seller's land described in **Exhibit B**, attached hereto and made a part hereof, for the purpose of installation, use, maintenance, replacement and repair of sanitary sewer lines; and (g) such other instruments, certificates or affidavits as may be provided herein or as Buyer or Title Company may reasonably request to effect the intention of the parties hereunder. Buyer shall pay all recording fees. Any escrow or closing fees charged by the Title Company shall be divided equally between Buyer and Seller. Seller shall pay the cost of releasing fees or other costs related to Seller's obligations.

14. Possession. Possession of the Real Estate shall be delivered to Buyer on the Closing Date in the same condition as it is now, free and clear of the claims of any other party except as permitted hereunder.

15. Rights and Obligations. The rights and obligations of Seller and Buyer herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective personal representatives, heirs, successors and assigns.

16. Notices. All notices required or permitted to be given hereunder shall be in writing and delivered either via telefax, in person or by certified or registered first-class prepaid mail, return receipt requested, to Seller or Buyer at their respective addresses set forth in the Basic Terms, or at such other address, notice of which may have been given to the other party in accordance with this Paragraph 16. Any notice given in accordance with this paragraph shall be deemed to have been duly given or delivered on the date the same is personally delivered to the recipient or received or refused by the recipient as evidenced by the return receipt.

17. Assignment. Buyer shall not be entitled to assign this Agreement or its rights hereunder without Seller's prior written consent, which consent, with respect to an assignment to an affiliate of Seller, shall not be unreasonably withheld or delayed. In the event of any permitted assignment hereunder, Buyer shall remain liable for the performance and observance of any terms, covenants and conditions of this Agreement which are the responsibility of the Buyer.

18. Complete Agreement. This Agreement represents the entire agreement between Seller and Buyer covering everything agreed upon or understood in this transaction. There are

no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition shall be made to this Agreement except by a written agreement executed by Seller and Buyer.

19. Authorized Signatories. The persons executing this Agreement for and on behalf of Buyer and Seller each represent that they have the requisite authority to bind the entities on whose behalf they are signing.

20. Partial Invalidity. If any term, covenant or condition of this Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

21. Use of Brokers. Each party represents and warrants to the other that it has dealt with no broker, finder or other person with respect to this Agreement or the transactions contemplated hereby, except for the Broker(s) identified in the Basic Terms. Seller shall pay a commission or fee to such Broker(s), provided this transaction closes, pursuant to separate agreement. Seller and Buyer each agree to indemnify and hold harmless one another against any loss, liability, damage, cost, expense or claim incurred by reason of any brokerage commission or finder's fee alleged to be payable because of any act, omission or statement of the indemnifying party other than to such Broker(s). Such indemnity obligation shall be deemed to include the payment of reasonable attorneys' fees and court costs incurred in defending any such claim.

22. Attorneys' Fees. In the event that either party shall bring an action or legal proceeding for an alleged breach of any provision of this Agreement or any representation, warranty, covenant or agreement herein set forth, or to enforce, protect, determine or establish any term, covenant or provision of this Agreement or the rights hereunder of either party, the prevailing party shall be entitled to recover from the nonprevailing party, as a part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys' fees and costs, expert witness fees and court costs as may be fixed by the court or jury.

23. Governing Law; Construction.

(a) This Agreement shall be interpreted and enforced according to the laws of the state in which the Real Estate is located.

(b) All headings and sections of this Agreement are inserted for convenience only and do not form part of this Agreement or limit, expand or otherwise alter the meaning of any provisions hereof.

(c) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

(d) The provisions of this Agreement are intended to be for the sole benefit of the parties hereto and their respective successors and assigns, and none of the provisions of this Agreement are intended to be, nor shall they be construed to be, for the benefit of any third party.

(e) Time is of the essence with respect to the duties and obligations of the parties hereunder.

24. Like-Kind Exchange. Seller shall have the right to identify other real estate of like kind which it desires to acquire in exchange for the Real Estate (the "Replacement Real Estate") in a transaction that Seller intends to qualify as a tax-free exchange under Section 1031 of the Internal Revenue Code. Buyer shall reasonably cooperate, at Seller's cost, with Seller in order that Seller may structure all or part of its sale of the Real Estate as such tax-free exchange, provided that (i) the Closing Date hereunder is not delayed, and (ii) Seller shall indemnify and hold Buyer harmless from and against any and all liabilities, losses, damages,

claims, costs, and expenses (including without limitation attorneys' fees and costs) incurred by Buyer as a result of or in connection with its cooperation. If at the time of Closing of Buyer's purchase of the Real Estate hereunder, Seller has not identified or is not ready to acquire the Replacement Real Estate, Seller shall have the right to assign all of its right, title and interest in and to this Agreement to a qualified intermediary.

25. Contingencies. This Agreement is contingent upon the satisfaction of the following matters:

Buyer entering into the Construction Contract with Seller's affiliate, Duke Construction Limited Partnership ("DCLP"), on or before the Closing Date pursuant to which DCLP will construct an industrial building upon the Real Estate, such contract to be in the form of **Exhibit C** attached hereto and incorporated by reference herein.

Should the contingency set forth in this Section 25 not be satisfied or waived within the time allowed above, then this Agreement will become null and void (except for the provisions herein which expressly survive this Agreement).

26. Default.

A. If Seller defaults in its obligations hereunder, Buyer may, by notice to Seller, terminate this Agreement, in which event the Earnest Money shall be refunded to Buyer, or Buyer may exercise any and all remedies available at law or in equity.

B. If Buyer defaults in the performance of any of its obligations hereunder, Seller shall be entitled to terminate this Agreement, and may exercise any and all remedies available at law or in equity.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first above written.

"BUYER"

BUILD-A-BEAR WORKSHOP, INC.,

By: /s/ Maxine Clark

Printed: Maxine Clark

Title: CEO

"SELLER:

DUKE REALTY OHIO
an Indiana general partnership

By: Duke Realty Limited Partnership
its Managing Partner

By: Duke Realty Corporation
its general partner

By: /s/ James T. Clark
James T. Clark
Senior Vice President
Columbus

STATE OF Missouri)
) SS:
COUNTY OF St. Louis)

Before me, a Notary Public in and for said County and State, personally appeared Maxine Clark, by me known to be the CEO of Build-A-Bear Workshop, Inc., a Delaware corporation, who acknowledged execution of the foregoing "Agreement" on behalf of said corporation.

WITNESS my hand and Notarial Seal this 20 day of December, 2005.

/s/ Donnene F. Smith
Notary Public

Donnene F. Smith
(Printed Signature)

My Commission Expires: 8/4/2008

My County of Residence: St. Louis

STATE OF OHIO)
) SS:
COUNTY OF Franklin)

Before me, a Notary Public in and for said County and State, personally appeared James T. Clark, by me known to be the Senior Vice President, Columbus of Duke Realty Corporation, an Indiana corporation, the general partner of Duke Realty Limited Partnership, an Indiana limited partnership, the Managing Partner of Duke Realty Ohio, an Indiana general partnership, who acknowledged execution of the foregoing "Real Estate Purchase Agreement" on behalf of said general partnership.

WITNESS my hand and Notarial Seal this 20 day of December, 2005.

/s/ Aimee D'Amore
Notary Public

Aimee D'Amore
(Printed Signature)

My Commission Expires: 10-20-2009

My County of Residence: Franklin

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

DESCRIPTION OF A 22.599 ACRE TRACT OF LAND

Situated in the State of Ohio, County of Franklin, Village of Groveport, located in Section 29, Township 11, Range 21, Congress Lands and being all of that 22.599 acre tract as conveyed to Duke Realty Ohio by deed of record in Instrument Number 200401160012598, said 22.599 acres being more particularly bounded and described as follows:

Beginning at an iron pin set in the westerly right-of-way line of Green Pointe Drive South, as shown of record in Plat Book 89, Pages 50 and 51, being the southeasterly corner of lot 8 of that subdivision entitled "Green Pointe Business Park" of record in Plat Book 85, Pages 100 and 101, as conveyed to Meritex Green Pointe, LLC by deed of record in Instrument Number 200501100006000, and being in the half-section line of said Section 29;

Thence **S 03° 45' 45" W**, with the westerly right-of-way line of said Green Pointe Drive South, a distance of **101.38 feet** to an iron pin set at a point of curvature of a curve to the right;

Thence Southwesterly, continuing with the westerly right-of-way line of said Green Pointe Drive South, with the arc of said curve **(Delta = 28° 30' 52", Radius = 1600.00 feet, Arc Length = 796.27 Feet)** a chord bearing and distance of **S 18° 01' 11" W, 788.08 feet** to an iron pin set at the northeasterly corner of that 8.299 acre tract as conveyed to Duke Realty Ohio by deed of record in Instrument Number 200401160012598;

Thence **N 86° 14' 40" W**, with the northerly line of said 8.299 acre tract, and with a northerly line of that 4.846 acre tract as conveyed to GPS Consumer Direct Inc. by deed of record in Instrument Number 200011020222617, a distance of **1000.35 feet** to a ¾" iron pin found at a corner thereof;

Thence **N 03° 53' 42" E**, with an easterly line of said 4.846 acre tract, a distance of **865.38 feet** to an iron pin set in the southerly line of that 0.57 acre tract as conveyed to Melvin L. Eberwein Jr. by deed of record in Instrument Number 200505250100720, being in the half-section line of said Section 29;

Thence **S 86° 12' 57" E**, with the southerly line of said 0.57 acre tract, and with the southerly line of that 37.68 acre tract as conveyed to Quentin F. Schlaegel by deed of record in Deed Book 3440, Page 143, being the said half-section line, a distance of **423.80 feet** to an iron pin set at the southwesterly corner of said lot 8, being the southeasterly corner of said 37.68 acre tract, and being the center of said Section 29;

Thence **S 86° 14' 40" E**, with the southerly line of said lot 8, being the half-section line of said Section 29, a distance of **768.63 feet** to the **True Point of Beginning,** and containing **22.599 acres** of land, more or less, as calculated by the above courses. Subject, however, to all legal highways, easements, and restrictions of record. The above description was prepared by Clark E. White, P.S. #7868 on December 14, 2005.

All iron pins set are ¾" diameter, 30" long with plastic cap inscribed "Advanced 7661".

All references used in this description can be found at the Franklin County Recorder's Office, Franklin County, Ohio. The **Basis of Bearings** used in this description was transferred from a GPS survey of **Franklin County Monuments "26-693" and "HAMILTON"** published by the Franklin County Engineer's Office, and is based upon the NAD83 Ohio State Plane Coordinate System, South Zone, 1986 adjustment, and determines the bearing between said monuments as **N 06° 55' 29" W.**

ADVANCED CIVIL DESIGN, INC.

Clark E. White. Ohio P.S. #7868 Date:

EXHIBIT 10.38

Agreement for the purchase of the whole of the issued share capital of The Bear Factory Limited

Dated March 3 2006

The Hamleys Group Limited
(Vendor)

Build-A-Bear Workshop UK Holdings Limited
(Purchaser)

The Bear Factory Limited
(Company)

DentonWildeSapte

One Fleet Place
London EC4M 7WS
United Kingdom

T +44 (0)20 7242 1212
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info@dentonwildesapte.com
www.dentonwildesapte.com

Contents

Share purchase agreement

Dated March 3 2006

Between

(1) **The Hamleys Group Limited** (the **Vendor**) registered in England under no. 2352435 whose registered office is at 188-196 Regent Street London W1R 6BT; and

(2) **Build-A-Bear Workshop UK Holdings Limited** (the **Purchaser**) registered in England under number 5651132 whose registered office is at St Stephens House, Arthur Road, Windsor, Berkshire, SL4 1RU; and

(3) **The Bear Factory Limited** (the **Company**) registered in England under no. 4036762 whose registered office is at 188-196 Regent Street London W1R 6BT.

Recital

The Vendor has agreed to sell the whole of the issued share capital of the Company to the Purchaser on and subject to the provisions of this Agreement.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Agreement the following definitions apply.

Accounts means the audited balance sheet and profit and loss account of the Company for the financial period ended on and as at the Accounts Date, including the reports and notes annexed thereto.

Accounts Date means 26 March 2005.

Act means the Companies Acts 1985 to 1989.

Business means the business of the Company as carried on at Completion, being the sale of stuff-your-own animals in an interactive in-store experience which involves the customer being actively engaged in making or dressing an animal.

Company's Accounting Principles has the meaning given to it in Schedule 5.

Company Charges means the RBS Security Documents which were executed by the Company.

Company Indebtedness means indebtedness (whether or not due for payment) of the Company owing to any member of the Vendor's Group or to Baugur Group HF or any of Baugur Group HF's other subsidiaries, but shall not include any items on normal trading account.

Completion means completion of the obligations of the parties required by Clause 5 and Schedule 6.

Completion Accounts means the statement of the net current assets of the Company as at the close of business on the Completion Date, to be prepared in accordance with Clause 4 and Schedule 5.

Completion Date means the date of Completion.

Confidential Information means all information received or obtained by a party as a result of entering into or performing this Agreement and which relates to:

(a) the negotiations concerning this Agreement;

(b) the provisions of this Agreement;

(c) the subject matter of this Agreement; or

(d) another party.

Confidential Business Information means all information which is not publicly known and which is used in or otherwise relates to the Company's business, customers or financial or other affairs.

Consideration has the meaning given to it in Clause 3.

Data Room means the data room comprising the documents made available to the Purchaser and its advisors as described in the index attached to the Disclosure Letter, such index being in the agreed form.

Disclosure Letter means the letter, together with the annexures thereto, written by the Vendor to the Purchaser as the disclosure letter for the purposes of this Agreement and accepted by the Purchaser on 3 March 2006.

Draft Accounts has the meaning given to it in Clause 4.2.

Encumbrance means any mortgage, charge, pledge, hypothecation, lien, assignment by way of security, title retention, option, right to acquire, right of pre-emption, right of set off, counterclaim, trust arrangement or any other security , preferential right, equity or restriction, and any agreement to give or create any of the foregoing.

Employees means those individuals engaged by the Company in the Business as at the Completion Date as listed in the Disclosure Letter.

Employment Regulations means the Transfer of Undertakings (Protection of Employment Regulations 1981).

Franchise Agreements means the several agreements pursuant to which the Company has granted to each of the other parties thereto, not being members of the Vendor's Group, certain rights to enable such parties to carry on the business of selling Products in specified territories, copies of which are attached to the Disclosure Letter and more particularly set out in Schedule 4.

Guarantees has the meaning given to it in Clause 12.1

ICTA means the Income and Corporation Taxes Act 1988.

Indemnified Warranties means the Warranties set out in paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 8.1, 9.1, 9.2, 13.1, 13.2, 14.2, 19, 21 and 23 of Schedule 2, each an Indemnified Warranty.

Independent Accountant has the meaning given to it in Clause 4.6.

Intellectual Property Rights means patents, trade marks, service marks, trade names, domain names, registered designs, designs, semiconductor topography rights, database rights of unfair extraction and reutilisation, copyrights and other forms of intellectual or industrial property (in each case in any part of the world, whether or not registered or registrable and if registered or registrable for their full period of registration with all extensions and renewals, and including all applications for registration or otherwise), know-how, inventions, formulae, confidential or secret processes and information, and any other protected rights and assets, and any licences and permissions in connection with the foregoing.

Management Accounts means the unaudited management accounts of the Company for the period of 9 months ended on and as at the Management Accounts Date, copies of which are attached to the Disclosure Letter, but excluding any budget or forecast contained therein.

Management Accounts Date means 24 December 2005.

Net Current Asset Value means the aggregate value of stocks, debtors, cash at bank and in hand, prepayments and accrued income of the Company less the aggregate of all creditors of the Company in each case as at the close of business on the Completion Date, as shown in the Completion Accounts to be agreed or determined in accordance with Clause 4 and Schedule 5.

Parties means the parties to this Agreement and **Party** means any thereof.

Pre-Sale Dividend means the interim dividend that will be paid by the Company to the Vendor prior to the Completion Date.

Products means a stuff-your-own-animal or the product of other retail business involving an interactive in-store customer experience where the customer is actively engaged in making or dressing the animal.

Property means each property particulars of which are set out in Schedule 3.

Property Documents means the documents listed in Schedule 3.

Purchaser's Group means the Purchaser, its subsidiaries and subsidiary undertakings, holding company and all other subsidiaries or subsidiary undertakings of its holding company from time to time.

Purchaser's Solicitors means Bryan Cave of 33 Cannon Street London EC4M 5TE.

Purchaser's Solicitors' Client Account means:

Bank: HSBC PLC, Westminster Branch, 22 Victoria Street, London SW1H 0NJ;
Bryan Cave A/C No. 2;
A/C No: 63065464;
Sort Code: 40-02-06.

Purchaser Warranties means the warranties given by the Purchaser pursuant to Clause 8.2.

RBS means The Royal Bank of Scotland plc.

RBS Security Documents means:

(a) a composite guarantee and debenture dated 13 August 2003 executed by the Company and certain other members of the Vendor's Group in favour of RBS as security trustee;

(b) a debenture dated 2 September 2003 supplemental to the composite guarantee and debenture referred to in paragraph (a) above executed by the Company and certain

other members of the Vendor's Group in favour of RBS as security trustee on behalf of itself and others; and

(c) a supplemental debenture dated 28 November 2003 supplemental to the debenture referred to in paragraph (b) above executed by the Company and certain other members of the Vendor's Group in favour of RBS as security trustee on behalf of itself and others.

Regent Street Concession Agreement means an agreement in the agreed form to be entered into at Completion between the Vendor, the Company and the Purchaser pursuant to which the Vendor will grant the Company a concession at the Vendor's Regent Street store on the terms and conditions set out therein.

Restricted Area means anywhere in the world.

Restricted Business means the Business or other retail business involving an interactive in-store customer experience where the customer is actively engaged in making or dressing the animal and the purchase of stuff-your-own-animals.

Restricted Period means the period of four years beginning on the Completion Date.

Shares means the entire issued share capital of the Company.

Subsidiary means Hobbies and Models Limited registered in England under no. 1207167, details of which are set out in Part 2 of Schedule 1.

Tax Authority has the same meaning as in the Tax Deed.

Taxation or **Tax** has the same meaning as in the Tax Deed.

Tax Deed means the deed in respect of Taxation in the agreed form.

Tax Warranties means the Warranties set out in Part 2 of Schedule 2.

Title Warranties means the Warranties set out in paragraph 23 of Schedule 2.

TMA 1970 means the Taxes Management Act 1970.

Transaction means the arrangements contemplated by this Agreement and ancillary documents.

Transitional Services Agreement means an agreement in the agreed form to be entered into at Completion between the Vendor, the Company and the Purchaser pursuant to which the Vendor will provide certain services to the Company for a specified period following Completion on the terms and conditions set out therein.

Vendor's Accountants means KPMG LLP of 2 Cornwall Street, Birmingham B3 2DL.

Vendor Charges means the RBS Security Documents which created Encumbrances over the Shares.

Vendor's Group means the Vendor and its subsidiaries and subsidiary undertakings from time to time and Corporal Limited, but excludes the Company and the Subsidiary, and also (to avoid doubt) excludes Baugur Group hf and any subsidiary or subsidiary undertaking of Baugur Group hf other than the Vendor and its subsidiaries and subsidiary undertakings from time to time (excluding the Company and the Subsidiary).

Vendor Indebtedness means any indebtedness (whether or not due for payment) owing to the Company from any member of the Vendor's Group or of Baugur Group hf or any of Baugur Group hf's other subsidiaries, but shall not include any items on normal trading account.

Vendor's Solicitors means Denton Wilde Sapte of One Fleet Place London EC4M 7WS.

Vendor's Solicitors' Client Account means Denton Wilde Sapte Client Account, The Royal Bank of Scotland plc, 1 Fleet Street, London EC4Y 1BD, Sort Code: 15.80.00, Account No: 67072440.

Warranties means the statements set out in Schedule 2.

1.2 Interpretation

In this Agreement, unless otherwise specified:

(a) the words and expressions defined in sections 736, 736A, 741, 742 and 744 of the Act have the same meanings;

(b) reference to any statute, bye-law, regulation, rule, delegated legislation or order is to any statute, bye-law, regulation, rule, delegated legislation or order as amended, modified or replaced from time to time and to any statute, bye-law, regulation, rule, delegated legislation or order replacing or made under any of them;

(c) references to any Clause, paragraph or Schedule are to those contained in this Agreement and all Schedules to this Agreement are an integral part of this Agreement;

(d) headings are for ease of reference only and shall not be taken into account in construing this Agreement;

(e) reference to any English legal concept, term, action, remedy, method of judicial proceeding, legal document, legal status, court or official shall, in respect of any jurisdiction other than England and Wales, be deemed to refer to what most nearly approximates in that jurisdiction to that reference;

(f) reference to any English statute, bye-law, regulation, rule, delegated legislation or order shall, in relation to any assets owned, liabilities incurred, company incorporated in, or business carried on in any jurisdiction other than England and Wales, be deemed to include what most nearly approximates in that jurisdiction to that reference;

(g) the expression **this Clause** shall unless followed by reference to a specific provision be deemed to refer to the whole clause (not merely the sub-clause, paragraph or other provision) in which the expression occurs;

(h) **person** includes any individual, firm, company or other incorporated or unincorporated body;

(i) **in writing** means any communication made by letter or fax, and **written** shall be construed accordingly;

(j) **business day** means a day (not being a Saturday or Sunday) on which banks are open for normal banking business in London;

(k) **agreement** means any agreement or commitment whether conditional or unconditional and whether by deed, under hand, oral or otherwise;

(l) **law** includes any legislation, any common or customary law, constitution, decree, judgment, order, ordinance, treaty or other legislative measure in any jurisdiction and any directive, request, requirement, guidance or guideline (in each case, whether or not having the force of law but, if not having the force of law, compliance with which is in accordance with the general practice of persons to whom the directive, request, requirement, guidance or guideline is addressed);

(m) a document is in the **agreed form** if it is in the form of a draft agreed between and initialled by or on behalf of the Vendor and the Purchaser on or before the date of this Agreement; and

(n) a person shall be deemed to be **connected** with another if that person is connected with another within the meaning of section 839 of ICTA.

2 Sale and purchase

2.1 Sale and purchase

The Vendor shall sell with full title guarantee and the Purchaser shall purchase the Shares free from any Encumbrance and with all rights attached or accruing to them on and after the date of this Agreement, save for the Pre-Sale Dividend paid by the Company to the Vendor.

2.2 Waiver of pre-emption and other rights

The Vendor waives:

(a) all pre-emption rights in respect of the Shares; and

(b) any other rights which may restrict the transfer of the Shares;

conferred on the Vendor whether by the articles of association of the Company, by agreement or otherwise.

3 Consideration

The consideration for the sale of the Shares shall be the payment by the Purchaser to the Vendor, in accordance with this Agreement, of the sum of £15,000,000 (fifteen million pounds sterling), adjusted pursuant to Clause 4 (the **Consideration**).

4 Completion Accounts and adjustment payment

4.1 Stock Valuation

The Vendor and the Purchaser shall procure that a valuation of the stock and work in progress of the Company as at close of business on the Completion Date is undertaken in accordance with the principles set out in Schedule 5 by representatives of the Vendor and the Purchaser jointly.

4.2 Preparation of Draft Accounts

Following Completion the Vendor shall procure:

(a) the preparation by the Vendor's Accountants of the draft Completion Accounts (the **Draft Accounts**) in accordance with Schedule 5, showing the estimated Net Current Asset Value; and

(b) subject to the Purchaser complying with its obligations under Clause 4.3, that a copy of the Draft Accounts showing the estimated Net Current Asset Value is delivered to the Vendor and Purchaser as soon as reasonably practicable following, and in any event within 42 business days after, Completion.

4.3 Availability of information

4.3.1 Subject to and in accordance with the provisions of paragraph 1.2(k) of Schedule 6, for the purposes of preparation of the Completion Accounts and the estimated Net Current Asset Value the Purchaser shall procure that the Vendor, the Vendor's Accountants and their representatives are promptly provided with access to all books, records, assets, working papers or other documents of the Company and such other assistance (including access to personnel and premises of the Company) which they reasonably request.

4.3.2 Following delivery of the Draft Accounts to the Purchaser and until agreement or determination of the Completion Accounts in accordance with this Clause each of the Vendor and the Purchaser shall procure (so far as it is able and so far as such matters are within its possession or control) that the other of them and their representatives are promptly provided with access to all books, records, assets, working papers or other documents and such other assistance (including access to personnel and premises) which they reasonably request for the purpose of reviewing the Draft Accounts, provided that any release of working papers may be upon terms which the accountants in question may reasonably require.

4.3.3 The Vendor and the Purchaser shall each be entitled, at its own expense (and in the case of the Vendor and its representatives subject always to Clause 15), to make and retain copies of documentation to which it is granted access in accordance with the provisions of this Clause 4.

4.4 Action if Purchaser disputes Draft Accounts

If the Purchaser wishes to dispute the Draft Accounts and/or the estimated Net Current Asset Value it shall notify the Vendor within 30 business days after receiving the Draft Accounts and such notice shall specify which items the Purchaser disputes, its reasons and the adjustments which, in its opinion, should be made to the Draft Accounts in order to comply with the requirements of this Agreement.

4.5 Agreement or deemed agreement of Draft Accounts

If the Purchaser does not serve notice under Clause 4.4 or confirms in writing to the Vendor that it agrees the estimated Net Current Asset Value shown in the Draft Accounts, Clause 4.8 shall apply.

4.6 Appointment of Independent Accountant

4.6.1 If the Purchaser serves notice under Clause 4.4 the parties shall use all reasonable endeavours to meet and reach agreement upon the Draft Accounts.

4.6.2 If the Vendor and the Purchaser have not agreed the Draft Accounts and the Net Current Asset Value within 14 business days of receipt by the Vendor of notice under Clause 4.4, or if any other dispute occurs in relation to the Draft Accounts or the Net Current Asset Value, either the Purchaser or the Vendor may refer the matter in dispute to an independent chartered accountant (the **Independent Accountant**).

4.6.3 The Independent Accountant shall be nominated by the Vendor and the Purchaser and, failing agreement within 7 business days of a request from either party to the other for a joint nomination, shall be such independent accountant (being a partner in an international firm of accountants other than KPMG) as is appointed on the application of either of them by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Independent Accountant shall be deemed to act as an expert and not as an arbitrator.

4.6.4 Each of the Vendor and the Purchaser shall promptly supply to the Independent Accountant all such assistance, documentation and information as he may require for the purposes of the reference, and the Vendor and the Purchaser shall use their respective reasonable efforts to procure the prompt determination of such reference. The determination of the Independent Accountant shall in the absence of manifest error be conclusive and binding on the Parties.

4.7 Costs of Independent Accountant

The costs of any Independent Accountant shall be borne by the Parties in such proportions as he may direct or, in the absence of direction, equally between the Purchaser and the Vendor. All costs of the Purchaser's accountants shall be borne by the Purchaser. All costs of the Vendor's Accountants shall be borne by the Vendor.

4.8 Consequences of agreement or determination of Completion Accounts

Following agreement or determination of the Draft Accounts and the estimated Net Current Asset Value in accordance with this Clause 4 the Draft Accounts as so agreed or determined shall constitute the Completion Accounts and the Net Current Asset Value shall be the amount shown in them.

4.9 Payment of adjustment

4.9.1 Within 7 business days after agreement or determination of the Net Current Asset Value under this Clause 4, if the Net Current Asset Value is £100,000 less than £525,000, the Vendor shall pay, in same day funds, to the Purchaser an amount equal to the amount by which such shortfall is greater than £525,000 and not merely the excess over £100,000 (such payment to be made into the Purchaser's Solicitors' Client Account, and the receipt of the Purchaser's Solicitors shall be a complete discharge to the Vendor who shall not be required to enquire as to the distribution of that amount).

4.9.2 If any amount due under this Clause 4.9 is not paid on the due date then the amount due shall accrue interest from and including the due date to the date on which payment is received at 3% above Barclays Bank plc base lending rate from time to time in force as well after as before judgment.

4.9.3 The amount of any payment made pursuant to this Clause 4.9 shall be by way of adjustment to the Consideration.

4.9.4 Any payment due pursuant to this Clause 4.9 shall be made free of any set-off, withholding or counterclaim, including (but without limitation) as a result of any claim (actual or alleged) arising out of the warranties, agreements, indemnities or undertakings in this Agreement or any documents ancillary hereto.

4.9.5 The Consideration shall be reduced by such amount of Company Indebtedness as is outstanding at Completion on the basis that such Indebtedness shall be fully discharged by the Purchaser immediately following Completion.

4.9.6 The Vendor acknowledges that the Purchaser will instruct KPMG to conduct an audit of the financial statements of the Company to 26 March 2006 the cost thereof to be borne by the Purchaser, and that such audit shall be conducted in conjunction with the determination of the Completion Accounts.

5 Completion arrangements

5.1 Time and place

Completion shall take place immediately following the signature of this Agreement at the offices of the Vendor's Solicitors.

5.2 Vendor's obligations

At Completion the Vendor shall do or procure those things listed in Part 1 of Schedule 6.

5.3 Purchaser's obligations

At Completion the Purchaser shall do or procure those things listed in Part 2 of Schedule 6.

5.4 No partial Completion

Neither the Vendor nor the Purchaser shall be obliged to complete the sale and purchase of any of the Shares unless the sale and purchase of all the Shares is completed simultaneously.

5.5 Valid receipt

The Vendor's Solicitors are authorised to receive payment of the Consideration on behalf of the Vendor. The receipt of the Vendor's Solicitors shall be a complete discharge to the Purchaser who shall not be obliged to enquire as to the distribution of the Consideration.

6 Discharge of indebtedness

6.1 Discharge of Vendor Indebtedness

The Vendor shall on or before Completion repay or procure the repayment of the Vendor Indebtedness.

6.2 Discharge of Company Indebtedness

The Company Indebtedness shall be discharged immediately following Completion in accordance with Clause 4.9.5.

7 Indemnities

7.1 The Vendor hereby indemnifies and agrees to hold the Purchaser harmless from and against any liability, loss, charge, claim or demand whether for Taxation or otherwise arising from:

7.1.1 the transfer by the Subsidiary of certain of its business, assets and liabilities to The Bear Factory Limited on 15 November 2001;

7.1.2 the sale by the Vendor of Hobbies and Models Limited to Hobbies and Models (No. 1) Limited (now known as Beatties of London (Properties) Limited) on 15 November 2001;

7.1.3 the sale by the Vendor of Hobbies and Models (No. 1) Limited (now known as Beatties of London (Properties) Limited) to Retail Services Limited on 16 November 2001;

7.1.4 the acquisition by The Bear Factory Limited of the Subsidiary from Beatties of London (Properties) Limited on 24 August 2005 and the subsequent disposal of the Company and the Subsidiary to the Purchaser;

7.1.5 the declaration of any dividends by the Subsidiary at any time;

7.1.6 the Subsidiary ceasing to be a member of the Vendor's Group (where for these purposes the definition thereof includes the Subsidiary);

7.1.7 the surrender of or claim for group relief in respect of the accounting periods of the Subsidiary beginning on or before Completion;

7.1.8 the late submission of Tax returns to a Tax Authority in respect of the accounting periods of the Subsidiary beginning on or before Completion; and

7.1.9 the termination by the Company at the direction of the Purchaser of either or both of the Franchise Agreements in respect of Sweden and Denmark provided that the franchisees of

such territories shall continue to be entitled for a period of six months from being given notice of termination to sell the stocks held by them at the date of such notice on the terms and subject to the conditions of the relevant Franchise Agreement.

7.2 The provisions of Clause 4 of the Tax Deed (Notification of claims and conduct of disputes) shall apply to any claim brought by the Purchaser pursuant to Clause 7.1 relating to Taxation as if that clause were set out herein with any necessary changes.

8 Warranties

8.1 Vendor Warranties

8.1.1 The Vendor warrants to the Purchaser that as at 3 March 2006 each of the Warranties is true and accurate.

8.1.2 For the purposes of the Warranties any reference to the Company shall be deemed to be a reference to the Company and the Subsidiary.

8.2 Reliance on Warranties

The Purchaser is entering into this Agreement on the basis of, and in reliance on, the Warranties.

8.3 Purchaser Warranties

The Purchaser warrants to the Vendor that:

(a) the Purchaser has the right, power and authority, and has taken all necessary action, to execute, deliver and exercise its rights and perform its obligations under this Agreement and to execute, deliver and exercise its rights and perform its obligations under each document to be executed pursuant to this Agreement to which it is expressed to be a party (the **Purchaser's Completion Documents**); and

(b) the execution and delivery of, and the performance by the Purchaser of its obligations under this Agreement and the Purchaser's Completion Documents will not:

(i) result in a breach of any provision of the memorandum or articles of association of the Purchaser;

(ii) result in a breach of, or constitute a default under, any instrument to which the Purchaser is a party or by which it is bound and which is material in the context of the transactions contemplated by this Agreement; or

(iii) result in a breach of any order, judgment or decree of any court or governmental agency to which the Purchaser is a party or by which it is bound or submits and which is material in the context of the transactions contemplated by this Agreement.

8.4 Indemnity Basis

8.4.1 Without prejudice to the right of the Purchaser to claim on any other basis or take advantage of any other remedies available to it, if any Indemnified Warranty is breached or proves to be untrue or misleading the Vendor shall pay to the Purchaser an amount equal to all costs and expenses (including, without limitation, damages, reasonable legal and other professional fees and costs, penalties, expenses and losses) incurred by the Purchaser or the Company as a result of such breach or of the Indemnified Warranty being untrue or misleading PROVIDED ALWAYS that notwithstanding any other provision of this Agreement the Purchaser shall take and shall procure that the Company will take all reasonable steps to mitigate the same as if it were under a common law duty to mitigate its loss.

8.4.2 A payment made in accordance with the provisions of this Clause 8.4 shall include any amount necessary to ensure that, after any Taxation of the payment, the Purchaser is left with the same amount it would have had if the payment was not subject to Taxation.

8.5 Survival of Warranties

Subject as specifically otherwise provided in this Agreement, the Warranties and the Purchaser's Warranties shall remain in full force and effect notwithstanding Completion.

8.6 Warranties to be independent

Each of the Warranties shall be separate and independent and shall not be limited by reference to any other Warranty or any other provision of this Agreement.

8.7 Tax and Property Warranties

The only Warranties given:

(a) in respect of Tax are the Tax Warranties, and the other Warranties shall be deemed not to be given in relation to Tax;

(b) in respect of the Property are those contained in paragraph 23 of Schedule 2, and the other Warranties shall be deemed not to be given in relation to the Property.

8.8 Vendor's knowledge

For the purposes of this Agreement and the Disclosure Letter, where any Warranty is qualified by the expression "so far as the Vendor is aware" or "to the best of the knowledge, information and belief of the Vendor" or by any similar qualification, such Warranty is given on the basis that enquiries have been made only of the Relevant Individuals but not of any other person, and that such Relevant Individuals have taken all reasonable steps necessary to inquire as to the accuracy of the statements contained in the Warranties. For the purposes of the foregoing the **Relevant Individuals** are:

(a) Nicholas Mather

(b) Alasdair Dunn

(c) Roger Parry; and

(d) Katherine Osborne

9 Tax

9.1 Each of the Parties shall comply with their respective obligations under the Tax Deed.

9.2 The provisions of paragraph 3 to the Tax Deed shall apply to limit the liability of the Vendor under the Tax Warranties.

10 Limitations on Vendor's Warranty liability

10.1 General limitations

10.1.1 The Vendor shall have no liability in respect of a claim under the Warranties:

(a) unless notice in writing of the claim is given by the Purchaser to the Vendor stating in reasonable detail the nature of the claim and, if practical, the amount claimed:

(i) in the case of a claim under any of the Warranties other than the Tax Warranties or Title Warranties, within eighteen months of Completion;

(ii) in the case of a claim under the Tax Warranties or the Tax Deed, on or before the seventh anniversary of Completion; and

(iii) in the case of the Title Warranties, at any time;

(b) if proceedings in respect of a claim, notified in accordance with paragraph (a) above, have not been issued and served on the Vendor within 6 months after the relevant date referred to in paragraph (a) save in respect of a contingent claim in which case such period of six months shall only commence on the date on which it ceases to be contingent.

10.1.2 The Vendor shall have no liability in respect of a claim under the Warranties:

(a) as regards any single claim (or a series of claims arising from substantially similar facts or circumstances), unless the amount of its liability thereunder exceeds £5,000 (five thousand pounds sterling);

(b) unless its liability in respect of the claim when aggregated with its liability in respect of all claims against the Vendor under the Warranties (disregarding claims excluded by paragraph (a) above) exceeds £100,000 (one hundred thousand pounds sterling), in which case the Vendor shall be liable for the whole amount (excluding claims referred to in paragraph (a) above) and not merely the excess.

10.2 Maximum claim limit

The aggregate liability of the Vendor under Clause 7 (Indemnities), the Warranties and the Tax Deed shall not exceed £12,500,000 (twelve million and five hundred thousand pounds sterling).

10.3 Other general limitations

The Vendor shall have no liability in respect of a claim under the Warranties:

(a) to the extent that the fact, matter or circumstance giving rise to the claim was fairly disclosed in the Disclosure Letter or is apparent on the face of the documents in the Data Room;

(b) as regards any claim if and to the extent that provision, reserve or note in respect thereof or of the event or circumstance giving rise thereto has been made in the Accounts or the Management Accounts or payment or discharge of the relevant matter has otherwise been taken into account in the Accounts or the Management Accounts;

(c) as regards any claim if and to the extent that payment or discharge of the claim or provision in respect of the claim or the event or circumstance giving rise thereto has been taken into account in the determination of the Net Current Asset Value as shown in the Completion Accounts;

(d) in respect of any claim which is contingent only, unless and until such contingent liability becomes an actual liability;

(e) as regards any claim to the extent of any amount which is recovered from insurers;

(f) as regards any claim if such claim would not have arisen but for any act or omission carried out after the date of this Agreement otherwise than in the ordinary course of

business by the Purchaser, the Company or any other member of the Purchaser's Group or any other person connected with any of them or any of their respective directors, employees or agents;

(g) as regards any claim if such claim would not have arisen but for a cessation after Completion of the business or trade or any part thereof of the Purchaser or the Company or any change in the nature of such business or trade or a sale or disposal of any share or any interest in the Company after Completion;

(h) as regards any claim to the extent that such claim or liability arises or that the amount thereof is increased as a result of any change after Completion in the accounting reference date or in any of the accounting or actuarial or tax reporting policies, bases or practices of the Company or the Purchaser; or

(i) to the extent that a breach of the Warranties also gives rise to a claim under the Tax Deed and the Vendor has satisfied such claim or vice versa.

10.4 Third party recovery

10.4.1 Where the Purchaser or the Company is at any time entitled to recover from some other person (including without limitation any government authority or under any policy of insurance) any sum in respect of any matter giving rise to a claim under this Agreement or under any document ancillary to this Agreement or thereto other than a claim in relation to Taxation:

(a) the Purchaser shall, and shall procure that the Company shall, undertake and exhaust all necessary steps to enforce such recovery before taking proceedings against the Vendor and, in the event that the Purchaser or the Company shall recover any amount from such other person, the amount of the claim against the Vendor shall be reduced by the amount recovered less all reasonable costs, charges and expenses incurred by the Purchaser or the Company in recovering that sum from such other person; or

(b) at the Vendor's option, subject to the Vendor having settled the relevant claim against the Vendor and subject to the Vendor indemnifying the Purchaser and the Company to their reasonable satisfaction in relation thereto, the Purchaser shall, or shall procure that the Company shall, for a nominal consideration assign to the Vendor the benefit of the rights of recovery, reimbursement or refund which the Purchaser or the Company has against such other person in respect of the matter giving rise to the relevant claim.

10.4.2 If at any time the Vendor pays to the Purchaser or the Company an amount pursuant to a claim under this Agreement or any document ancillary hereto (other than a claim in relation to Taxation) and the Purchaser or the Company subsequently becomes entitled to recover from any other person (including without limitation any government authority or under any policy of insurance) any sum in respect of any matter giving rise to such claim:

(a) the Purchaser shall, and shall procure that the Company shall, undertake all necessary steps to enforce such recovery, and shall forthwith pay to the Vendor so much of the amount paid to the Purchaser or the Company as does not exceed the sum recovered from such other person less all reasonable costs, charges and expenses incurred by the Purchaser or the Company in recovering that sum from such other person; or

(b) at the Vendor's option, subject to the Vendor indemnifying the Purchaser and the Company to their reasonable satisfaction in relation thereto, the Purchaser shall, or shall procure that the Company shall, for a nominal consideration assign to the Vendor the benefit of the rights of recovery, reimbursement or refund which the Purchaser or the Company has against such other person in respect of the matter giving rise to the relevant claim.

10.4.3 The Purchaser shall, or shall procure the Company shall, keep the Vendor fully and promptly informed of any actual or prospective right of recovery from any third party as referred to in Clause 10.4.1 or 10.4.2 above.

10.5 Conduct of disputes

10.5.1 If the Purchaser or the Company become aware of any claim, action or demand against either of them, or of any circumstance which may give rise to any claim, action or demand against either of them, and which may give rise to a claim under this Agreement (other than a claim under the Tax Warranties or Tax Deed to which paragraph 4 of the Tax Deed shall apply), the Purchaser shall forthwith give written notice (including reasonable particulars of such claim or circumstance) to the Vendor and the Purchaser shall and shall procure that the Company (if relevant) shall:

(a) not knowingly make any admission of liability, or any agreement or compromise with any person body or authority in relation thereto without the prior written agreement of the Vendor which shall not be unreasonably withheld or delayed;

(b) give the Vendor and its professional advisers reasonable access to the premises and personnel of the Purchaser and the Company, as the case may be, and to any relevant assets, accounts, documents and records within the control of the Purchaser or the Company to enable the Vendor and its professional advisers to examine such assets, accounts, documents and records and take photographs or photocopies thereof at its own expense in order to appraise themselves of all facts, matters and information relevant to the claim, action or demand against the Purchaser or the Company;

(c) subject to the Vendor having provided the Purchaser or the Company (as appropriate) with such indemnity therefor as the Purchaser or the Company may reasonably require in relation thereto, permit the Vendor in the name of the Purchaser or the Company (as appropriate) to appoint such professional advisers and to take such action as the Vendor may consider reasonably necessary or desirable to avoid, dispute, resist, appeal, compromise or defend the claim, action or demand and any adjudication in respect thereof subject only to consulting the Purchaser or the Company (as appropriate), prior to taking any such action; and

(d) at the option of the Vendor, afford the Vendor the opportunity to take such steps to remedy or avert such claim or circumstance as the Vendor may require,

Provided that the Purchaser shall not be required to take nor shall the Vendor take any action which in the Purchaser's reasonable opinion would materially adversely affect the goodwill or standing of the Purchaser or the Company or damage the reputation of any brand of either of them.

10.6 Opportunity to remedy breach

A breach of any Warranty which is capable of remedy shall not entitle the Purchaser to compensation or damages unless the Vendor is given written notice of the breach by the Purchaser and such breach is not remedied by the Vendor at no cost to the Purchaser or the Company within thirty (30) days after the date on which notice is served on the Vendor. If such breach has not been remedied within that 30 day period, then the date on which notice of a claim in respect of that breach shall be deemed to have been given to the Vendor for the purposes of Clause 9.1(a) above shall be the date on which notice was given under this Clause, provided that such notice satisfies the other requirements of Clause 9.1(a) above when so given.

10.7 Purchaser's knowledge

The Purchaser represents and confirms to the Vendor that as at the date of this Agreement, having made enquiry of the Purchaser's Solicitors and its other advisors, neither the

Purchaser nor any director of the Purchaser is aware of any fact, matter or circumstance which:

(a) constitutes a breach of the Warranties; or

(b) gives rise to a claim under the Tax Deed or any specific indemnity in this Agreement.

To the extent that the Purchaser is so aware no claim may be made under the Warranties or Tax Deed under this Agreement in respect of such fact, matter or circumstance.

10.8 Exceptions to limitations

Nothing in this Clause 10 shall have the effect of limiting or restricting any liability of the Vendor in respect of a claim under the Warranties or the Tax Deed arising as a result of any fraud or wilful concealment.

10.9 General

10.9.1 After Completion the Purchaser shall have no right of rescission or right to terminate this Agreement and, accordingly, the Purchaser waives all and any rights of rescission or termination it may have in respect of any such matter (howsoever arising or deemed to arise).

10.9.2 The Purchaser shall not be entitled to claim for any punitive, indirect or consequential loss in respect of any claim.

10.9.3 Without prejudice to any other provision in this Agreement for the protection of the Vendor the Purchaser shall and shall procure that the Company shall take all reasonable steps to mitigate any loss which is or may be the subject of any claim under this Agreement.

10.9.4 The amount of any payment made by the Vendor to the Purchaser in respect of any claim under the Warranties or the Tax Deed shall be deemed a reduction pound for pound in the Consideration.

10.9.5 The Vendor shall not be liable for any claim under the Warranties or the Tax Deed if the Purchaser fails in a material respect to act in accordance with this Clause 10 in connection with the matter giving rise to such claim unless and to the extent that, in the absence of the failure, the Purchaser would still have had such a claim.

11 Employees

11.1 Transfer of Employees

The Vendor, the Purchaser and the Company acknowledge that the transfer of the Employees from the Vendor or any other member of the Vendor's Group with whom such Employees have their contract of employment prior to Completion (the **Employing Company**) to the Company (the **Employee Transfer**) may be one to which the Employment Regulations apply. Accordingly, prior to Completion, the contracts of employment of the Employees shall have effect as if originally made between the Employees and the Company and the Vendor hereby confirms that letters have been sent to the Employees by their respective employers confirming that their employment will transfer to the Company with effect from a date not later than 23 February 2006.

11.2 Purchaser's Warranty of complete Employment Information

The Purchaser has provided to the Vendor such information as the Vendor has requested so as to enable the Vendor to comply with the obligations of the Vendor to inform and consult with the Employees pursuant to the Employment Regulations. The Purchaser has informed the Vendor of all such measures (if any) within the meaning of the Employment Regulations which the Purchaser presently intends to take in respect of the Employees.

11.3 Consultation

The Vendor shall procure that the information and consultation requirements set out in Regulation 10 of the Employment Regulations are met to the extent to which the Vendor is able considering always the extent to which the Purchaser has provided full information to the Vendor (as set out at 11.2 above) including all information in respect of any measures within the meaning of the Employment Regulations which the Purchaser intends to take in respect of the Employees.

11.4 Indemnity by Vendor

The Vendor shall indemnify the Purchaser and each other member of the Purchaser's Group against all liabilities, losses, charges, costs, expenses, penalties, claims, demands and reasonable legal and other professional fees and costs whatsoever directly or indirectly in connection with the Employees arising from the Employee Transfer including any failure to comply with any duty to inform or consult trade union and/or employee representatives under the Employment Regulations in connection with the Employee Transfer provided always that this indemnity does not extend to liabilities, losses, charges, costs, expenses, penalties, claims, demands and legal and other professional fees and costs:

(a) to the extent that the same are caused by or contributed to by the Purchaser's failure accurately and fully to supply employment information and/or inform the Vendor of such measures it intends to take in respect of the Employees for the purposes of consultation as set out at Clause 11.2 above; and/or

(b) to the extent that the same are caused by or contributed to by any closure of or measures taken in relation to the Aberdeen and Bristol stores or the matters set out in the "Amendment to and Extension of Agreed Term Sheet" dated 15 February 2006 and more particularly item 6 of that document regarding the Watford and Stirling stores; and/or

(c) incurred as a result of the Purchaser making any unauthorised approach to any supplier of the Company prior to Completion, including, but not limited to, any approach to Streamline or Keenpack.

11.5 Indemnity by Purchaser

Subject to provisions of Clause 11.4, the Purchaser shall indemnify the Vendor and each other member of the Vendor's Group from and against all liabilities, losses, charges, costs, expenses, penalties, claims, demands and reasonable legal and other professional fees and costs whatsoever directly or indirectly arising in connection with the employment of the Employees during the period beginning at the close of business on the Completion Date.

11.6 Use of Office Space

The Vendor shall, following Completion, provide the Purchaser with temporary office space and usual office equipment for such space at their premises at 2, Fouberts Place, London, W1F 7PA for a period of 7 days to accommodate 15 of employees.

12 Releases, Indemnities and Acknowledgement

12.1 The Purchaser shall:

(a) as soon as reasonably practicable following Completion, procure the release of each member of the Vendor's Group from its obligations under all guarantees, indemnities and other contingent liabilities given or assumed by it in respect of liabilities of the Company to third parties including without limitation the guarantees in respect of the Company's Milton Keynes and Sheffield lease obligations (the **Guarantees**); and

(b) pending the grant of such release, indemnify and keep indemnified the Vendor and each other member of the Vendor's Group against any liabilities, costs, damages and expenses (of whatsoever nature and howsoever arising) under the Guarantees or which may be incurred in relation to the Guarantees.

12.2 The Vendor acknowledges and accepts that it shall have full liability and that the Company shall have no liability under the contractual arrangements with Li & Fung whether entered into prior to or after Completion other than those arising specifically in relation to purchase orders placed with Li & Fung for goods supplied or to be supplied for the sole benefit of the Company.

13 Restrictions on Vendor's business activities

13.1 Vendor's covenants

The Vendor covenants with the Purchaser that the Vendor shall not, and shall procure that no other member of the Vendor's Group shall, whether alone or jointly with or on behalf of any other person at any time during the Restricted Period carry on or be engaged or interested in any Restricted Business within the Restricted Area (except as the holder of shares in a company whose shares are publicly traded and which confer not more than 5% of the votes which can generally be cast at a general meeting of such company) provided that the foregoing shall not limit the Vendor from the sale of plush toys that do not fall into the definition of Restricted Business.

13.2 Acquisitions

Nothing in Clause 13.1 shall prevent any member of the Vendor's Group from acquiring (whether by private treaty, public offer or otherwise howsoever) any other company or business which carries on any Restricted Business provided that such Restricted Business accounts for less than 20% of the annual turnover of the company or business so acquired.

13.3 Undertakings separate

Each covenant in this Clause 13 shall be construed as a separate covenant. If one or more of the covenants is held to be void or unenforceable, the validity of the remaining covenants shall not be affected.

14 Maintenance and availability of records

14.1.1 The Purchaser shall promptly on demand by the Vendor provide, or procure that the Company and its subsidiaries or affiliates from time to time provide, to the Vendor or its duly authorised agents such working papers, ledgers, accounts, records and other documents in relation to the Company as the Vendor may deem reasonably necessary to enable the Vendor or any other company that is a member of or is connected or in any way associated with any group of companies to which the Vendor belongs or may belong (a **Vendor Associated Company**) to complete and file any tax or customs or excise or similar returns or reports, to carry out any tax audit or other proceeding or otherwise to fulfil any requirements of any law or regulation binding on the Vendor or any Associated Company.

14.1.2 The Vendor shall promptly on demand by the Purchaser provide to the Purchaser or its duly authorised agents such working papers, ledgers, accounts, records and other documents as the Purchaser may deem reasonably necessary to enable the Purchaser or any other company that is a member of or is connected or in any way associated with any group of companies to which Purchaser belongs or may belong (a **Purchaser Associated Company**) to complete and file any tax or customs or excise or similar returns or reports (in particular any SEC filings), to carry out any audit or other proceeding or otherwise to fulfil any requirements of any law or regulation binding on the Purchaser or any Purchaser Associated Company.

14.1.3 The Purchaser agrees that it will, and will procure that the Company and its subsidiaries and affiliates from time to time will, retain and maintain all such working papers, ledgers, accounts, records and other documents for all years and periods ending on or before or current at Completion for a period of not less than 10 years.

15 Confidentiality

15.1 Duty of confidentiality

Save as provided by Clause 15.3 each Party shall, and shall procure that any person connected with it and its officers and employees shall, keep confidential and not disclose to any person any Confidential Information.

15.2 Confidential Business Information

Save as permitted by Clause 15.3 the Vendor covenants with the Purchaser that the Vendor shall not, and shall procure that no person connected with and no director, officer or employee of that Vendor shall, make use of or disclose to any person any Confidential Business Information.

15.3 Permitted disclosures

A Party may disclose or permit the disclosure of Confidential Information and the Vendor may disclose or permit the disclosure of Confidential Business Information:

(a) to its directors, officers, employees, sub-contractors, agents, legal or other professional advisers, to the extent necessary to enable it or them to perform or cause to be performed or to enforce any of its rights or obligations under this Agreement;

(b) when required to do so by law or by or pursuant to the rules or any order of any court, tribunal or agency of competent jurisdiction;

(c) to the extent that the Confidential Information or Confidential Business Information has become publicly available or generally known to the public at the time of such disclosure otherwise than as a result of a breach of this Clause 15;

(d) to a relevant Tax Authority to the extent required for the proper management of the taxation affairs of that party, any of its holding companies or any subsidiary of any of the foregoing;

(e) if such disclosure is expressly permitted by some other provision of this Agreement or the Tax Deed or if the other Parties or (in the case of Confidential Business Information) the Purchaser has or have given prior written approval to the disclosure;

(f) when required by any securities exchange, regulatory or governmental body having jurisdiction over the Party seeking to make disclosure, including the United Kingdom Financial Services Authority, the Icelandic Stock Exchange, the New York Stock Exchange and NASDAQ, whether or not the requirement for disclosure has the force of law.

15.4 Consultation

If a Party is required to disclose Confidential Information or Confidential Business Information in a manner permitted by Clause 15.3(b) or 15.3(f) that Party shall to the extent such consultation is practicable and permitted by the relevant law, rule, order, exchange or body:

(a) provide the other Parties with advance notice of the requirement and a copy of the information to be disclosed; and

(b) permit the other Parties to make representations in relation to it; and

(c) at the expense of and subject to being indemnified to its satisfaction by the other Parties give the other Parties who would be affected by the disclosure a reasonable opportunity to seek an appropriate remedy to prevent such disclosure and co-operate fully (including if necessary joining in legal proceedings) with another Party.

15.5 Continuance of obligations

The obligations in this Clause 15 shall continue to apply after Completion or termination of this Agreement without limit in time.

16 Announcements

16.1 Restrictions

Except as provided in Clause 16.2, a Party shall not make (and shall procure that no person connected with it nor any of its directors, officers or employees shall make) any public announcement concerning the subject matter of this Agreement without the prior written approval of the other Parties.

16.2 Permitted announcements

A Party may make a public announcement concerning the subject matter of this Agreement if required by:

(a) law or by or pursuant to the rules or any order of any court, tribunal or agency of competent jurisdiction; or

(b) any securities exchange, regulatory or governmental body having jurisdiction over it including the United Kingdom Financial Services Authority, the Icelandic Stock Exchange, the New York Stock Exchange and NASDAQ, whether or not the requirement for announcement has the force of law.

16.3 Prior consultation on announcements

If a Party is required to make a public announcement in a manner permitted by Clause 16.2 that Party shall to the extent practicable and permitted by the relevant law, rule, order, exchange or body:

(a) provide the other Parties with advance notice of the requirement and a copy of the announcement to be made;

(b) permit the other Parties to make representations in relation to it; and

(c) at the expense of and subject to being indemnified to its satisfaction by the other Parties give the other Parties a reasonable opportunity to seek an appropriate remedy to prevent such announcement and co-operate fully (including if necessary joining in legal proceedings) with another Party.

16.4 Continuance of obligations

The obligations in this Clause 16 shall continue to apply after Completion or termination of this Agreement without limit in time.

17 Costs and expenses

17.1 Each party responsible for its own costs

Each Party will be responsible for its own costs and expenses in relation to the negotiation, preparation, execution and implementation of this Agreement and all documents ancillary to it.

18 Payments

18.1 No deduction

All sums payable to the Purchaser pursuant to this Agreement shall be paid without deduction, withholding, set off or counterclaim.

19 Assignment

19.1 Each of the Purchaser and the Company (as the case may be) shall be entitled to assign or transfer its rights and benefits (but not its obligations) under this Agreement or any document ancillary to this Agreement to any purchaser of the Shares or of the Business (as the same shall be carried on at the date of such sale) provided that the liability of the Vendor hereunder and under the Tax Deed and any document ancillary to this Agreement shall not be increased as a result of or in connection with such assignment or transfer or by the holding or enforcement of such rights and benefits by any such purchaser.

19.2 The Vendor shall be entitled to assign or transfer its rights and benefits (but not its obligations) under this Agreement or any document ancillary to this Agreement to any third party provided that the liability of the Purchaser hereunder shall not be increased as a result of or in connection with such assignment or transfer or by the holding or enforcement of such rights and benefits by any such third party.

19.3 Save as expressly permitted pursuant to this Clause, neither the Vendor, the Purchaser, nor the Company may assign or transfer any of its rights or benefits under this Agreement or any document ancillary to this Agreement.

20 Remedies and waivers

20.1 No waiver or discharge

No breach by any Party of any provision of this Agreement shall be waived or discharged except with the express written consent of the other Parties.

20.2 Effect of failure or delay

No failure or delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver of that right, power or privilege and no single or partial exercise by any Party of any right, power or privilege shall preclude any further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

20.3 Rights and remedies cumulative

The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law or otherwise.

20.4 Third party rights

The Parties intend that the provisions of Clause 11 (The Employees) shall be enforceable by each member of the Vendor’s Group, but the Parties do not intend that any other term of this

Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

21 Further assurance

21.1 Further assurance

Each Party shall after Completion from time to time at the expense of the requesting Party execute and do (or procure the execution and doing of) all such deeds, documents, acts and things as any other Party shall reasonably require on or after Completion for carrying into effect the terms of this Agreement.

22 Entire agreement

22.1 In this Clause **Representation** means a representation, statement, assurance, covenant, undertaking, indemnity, guarantee or commitment (whether contractual or otherwise).

22.2 This Agreement and each document referred to in it constitutes the entire agreement and supersedes any previous agreements between the Parties relating to the subject matter of this Agreement.

22.3 In entering into this Agreement, the Purchaser acknowledges and represents that it has not relied on or been induced to enter into this Agreement by a Representation given by the Company, the Vendor, any other member of the Vendor's Group or any advisor to the Vendor or any other party other than the Warranties or otherwise as set out in this Agreement or in any document referred to in this Agreement.

22.4 In entering into this Agreement, the Vendor acknowledges and represents that it has not relied on or been induced to enter into this Agreement by any representation given by the Company, the Purchaser, any other member of the Purchaser's Group or any advisor to the Purchaser or any other party.

22.5 In relation to the subject matter of this Agreement, the Vendor is not liable to the Purchaser for a Representation that is not set out in this Agreement or in any document referred to in this Agreement.

23 Counterparts

23.1 Number and effectiveness of counterparts

This Agreement may be executed in any number of counterparts. Any Party may enter into this Agreement by executing any counterpart but this Agreement shall not be effective until each Party has executed at least one counterpart.

23.2 One instrument

Each counterpart shall constitute an original of this Agreement but all the counterparts together constitute the same instrument.

24 Notices

24.1 This Clause 24 shall not apply for service and receipt of documents for the purposes of legal proceedings. Service and Receipt of documents for the purposes of legal proceedings shall be governed by Clause 25 in conjunction with the relevant rules of Court.

24.2 Service

Any notice or other communication to be given under this Agreement shall be in writing and shall be delivered by hand, sent by prepaid first class recorded delivery or registered post, (or registered airmail in the case of an address outside the United Kingdom), or shall be transmitted by fax, and shall be addressed to the Party to be served at the address or fax number specified below:

(a) The Vendor

188-196 Regent Street, London W1R 6BT

Attention: Nick Mather
Fax number: +44 (0)20 7479 7319

(b) The Purchaser

Build-A-Bear Workshop, Inc
1954 Innerbelt Business Center, St Louis, Missouri, 63114-5760 USA

Attention: General Counsel
Fax number: 314-423-8188

(c) The Company

Build-A-Bear Workshop, Inc
1954 Innerbelt Business Center, St Louis, Missouri, 63114-5760 USA

Attention: General Counsel
Fax number: 314-423-8188

or to such other address in the same jurisdiction as a Party may notify to the other Parties in writing as being its address for such purpose.

24.3 Receipt

Any notice or communication delivered by hand shall be deemed to have been received at the time of delivery, any notice or communication sent by post shall be deemed to have been received on the second business day (for inland mail) or the fifth business day (for overseas mail) after the date of posting, and any notice or communication transmitted by fax shall be deemed to have been received on the business day following the date of transmission.

25 Governing law and jurisdiction

25.1 English law

This Agreement shall be governed by and construed in accordance with English law.

25.2 Jurisdiction

The Parties irrevocably agree that the English courts shall have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement.

25.3 Address for service

The Purchaser's address for service under this Clause 25 is c/o the Purchaser's Solicitors at the address stated in Clause 1. Items served at this address must be marked for the personal attention of Anthony Fiducia. The Vendor's address for service under this Clause 25 is that stated in Clause 24.1(a) or such other address so may be notified to the Purchaser in writing in accordance with Clause 24.

25.4 Agreed method of service

Any claim form, application notice, judgment, orders or other notice of legal process relating to this Agreement may be served on a Party by posting it by pre-paid first class recorded delivery post to that Party's address for service specified in this Clause, or to such other address for service within England as may be notified in accordance with Clause 24 to the Party effecting service.

As witness the hands of the duly authorised representatives of the Parties hereto the day and year first above written

Schedule 1 — Particulars of the Company and the Subsidiary

1 Particulars of the Company

Date of incorporation:	14 July 2000
Place of registration:	England and Wales
Company registration number:	04036762
Registered office:	188-196 Regent Street London W1R 6BT
Authorised share capital:	12,211,556 ordinary shares of £1 each
Issued share capital:	12,211,556 ordinary shares of £1 each
Accounting reference date:	25 March
Names and addresses of directors:	Nicholas Mather Newells House Newells Lane Cutmill Bosham West Sussex PO18 8PS Katherine Anne Osborne 7 Foster Close Cheshunt Waltham Cross Hertfordshire EN8 9RZ Alasdair Dunn 44 Welbeck Avenue Highfield Southampton Hampshire SO17 1SS
Name and address of secretary:	Alasdair Dunn 44 Welbeck Avenue Highfield Southampton Hampshire SO17 1SS
Name and address of auditors:	KPMG LLP
Names of subsidiaries (if any):	Hobbies and Models Limited

2 Particulars of the Subsidiary

Date of incorporation:	11 April 1975
Place of registration:	England and Wales
Company registration number:	01207167
Registered office:	188 -196 Regent Street London W1R 6BT
Authorised share capital:	£114,800
Issued share capital:	74,000 A Ordinary Shares of £1 each 26,000 B Ordinary Shares of £1 each 1,480,000 C Ordinary Shares of £0.01 each
Accounting reference date:	25 March
Names and addresses of directors:	Nicholas Mather Newells House Newells Lane Cutmill Bosham West Sussex PO18 8PS Alisdair Dunn 44 Welbeck Avenue Highfield Southampton Hampshire SO17 1SS
Name and address of secretary:	Nicholas Mather Newells House Newells Lane Cutmill Bosham West Sussex PO18 8PS
Names of subsidiaries (if any):	None
Mortgages and charges:	None

Schedule 2 — Warranties

Part 1 — General warranties

1 Power to sell the Company

1.1 The Vendor has taken all necessary action and has all requisite power and authority to enter into and perform this agreement in accordance with its terms and the other documents referred to in it.

1.2 This agreement and the other documents referred to in it constitute (or shall constitute when executed) valid, legal and binding obligations on the Vendor in the terms of the agreement and such other documents.

1.3 Compliance with the terms of this agreement and the documents referred to in it shall not breach or constitute a default under any agreement or instrument to which the Vendor is a party or by which it is bound.

2 Shares in the Company and Subsidiary

2.1 The Shares constitute the whole of the allotted and issued share capital of the Company and are fully paid.

2.2 The Vendor is the sole legal and beneficial owner of the Shares.

2.3 The Shares are free from all Encumbrances.

2.4 No right has been granted to any person to require the Company to issue any share capital and no Encumbrance has been created in favour of any person affecting any unissued shares or debentures or other unissued securities of the Company.

2.5 No commitment has been given to create an Encumbrance affecting the Shares (or any unissued shares or debentures or other unissued securities of the Company) or for any of them to issue any share capital and no person has claimed any rights in connection with any of those things.

2.6 The Company:

(a) does not hold or beneficially owns, or has agreed to acquire, any securities of any corporation save for the Subsidiary; or

(b) has not agreed to become a member of any partnership or other unincorporated association, joint venture or consortium (other than recognised trade associations); or

(c) has not, outside its country of incorporation, any branch or permanent establishment; or

(d) has not allotted or issued any securities that are convertible into shares.

2.7 The Company has not at any time:

(a) purchased, redeemed or repaid any of its own share capital; or

(b) given any financial assistance in connection with any acquisition of its share capital or the share capital of its holding Company (as that expression is defined in section 736 of the companies acts) as it would fall within sections 151 to 158 (inclusive) of the companies acts.

2.8 All dividends or distributions declared, made or paid by the Company have been declared, made or paid in accordance with its memorandum, articles of association, the applicable provisions of the Companies Acts and any agreements or arrangements made with any third party regulating the payment of dividends and distributions.

2.9 Save as disclosed in the Disclosure Letter, the Subsidiary has no assets or liabilities and is dormant.

3 Constitutional and corporate documents

3.1 All statutory books and registers of the Company have been properly kept in all material respects and no notice or allegation that any of them is incorrect or should be rectified has been received.

Information

3.2 All information contained in the Disclosure Letter is true and accurate and not misleading.

3.3 The particulars relating to the Company in this agreement are true and accurate and not misleading.

4 Compliance with laws

So far as the Vendor is aware, the Company has at all times conducted its business in accordance with all applicable laws and regulations.

5 Licences and consents

The Company has all necessary licences, consents, permits and authorities necessary to carry on its business in the places and in the manner in which its business is now carried on, all of which are valid and subsisting.

6 Insurance

6.1 Particulars of those insurance policies currently effected by the Company and set out in the Disclosure Letter are not misleading.

6.2 There are no material outstanding claims under, or in respect of the validity of any of those policies and so far as the Vendor is aware, there are no circumstances likely to give rise to any claim under any of those policies.

6.3 All the insurance policies are in full force and effect, are not void or voidable, and so far as the Vendor is aware, nothing has been done or not done which could make any of them void or voidable and completion will not terminate, or entitle any insurer to terminate, any such policy.

7 Power of attorney

7.1 There are no powers of attorney in force given by the Company.

7.2 No person, as agent or otherwise, is entitled or authorised to bind or commit the Company to any obligation not in the ordinary course of the Company business.

7.3 The Disclosure Letter sets out details of all persons who have authority to bind the Company in the ordinary course of business.

8 Disputes and investigations

8.1 The Company:

(a) Is not engaged in any litigation, administrative, mediation or arbitration proceedings or other proceedings or hearings before any statutory or governmental body, department, board or agency (except for debt collection in the normal course of business); or

(b) Is not the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body.

8.2 No director of the Company is, to the extent that it relates to the business of the Company, engaged in or subject to any of the matters mentioned in paragraph 8.1(a) of this Schedule 2.

8.3 No such proceedings, investigation or inquiry as are mentioned in paragraph 8.1(a) or paragraph 8.1(b) of this Schedule 2 have been threatened and so far as the Vendor is aware, no such proceedings are pending and there are no circumstances likely to give rise to any such proceedings.

8.4 The Company is not affected by any existing or pending judgments or rulings and has not given any undertakings arising from legal proceedings to a court, governmental agency, regulator or third party.

9 Defective products and services

9.1 No proceedings have been served and so far as the Vendor is aware none are pending or have been threatened against the Company in which it is claimed that any products sold by the Company concerned are defective, not appropriate for their intended use or have caused bodily injury or material damage to any person or property when applied or used as intended.

9.2 No proceedings have been served and so far as the Vendor is aware there are no outstanding liabilities or claims pending or threatened against the Company in respect of any services supplied by the Company for which the Company is or may become liable and no dispute exists between the Company and any of their respective customers.

10 Customers and suppliers

10.1 In the 12 months ending with the date of this Agreement, the business of the Company has not been materially affected in an adverse manner as a result of any one or more of the following things happening to the Company:

(a) The loss of any of its customers or suppliers of significance; or

(b) A reduction in trade with its customers or in the extent to which it is supplied by any of its suppliers; or

(c) A change in the terms on which it trades with or is supplied by any of its customers or suppliers.

11 Competition

11.1 The definition in this paragraph applies in this agreement.

Competition Law: the national and directly effective legislation of any jurisdiction which governs the conduct of companies or individuals in relation to restrictive or other anti-competitive agreements or practices (including, but not limited to, cartels, pricing, resale pricing, market sharing, bid rigging, terms of trading, purchase or supply and joint ventures),

dominant or monopoly market positions (whether held individually or collectively) and the control of acquisitions or mergers.

11.2 The Company is not engaged in any agreement, arrangement, practice or conduct which amounts to an infringement of the Competition Law of any jurisdiction in which the Company conducts business and no director is engaged in any activity which would be an offence or infringement under any such competition law.

11.3 The Company is not the subject of any investigation, inquiry or proceedings by any relevant government body, agency or authority in connection with any actual or alleged infringement of the Competition Law of any jurisdiction in which the Company conducts business.

11.4 No such investigation, inquiry or proceedings as mentioned in paragraph 11.3 of this Schedule 2 have been threatened or are pending and so far as the Vendor is aware there are no circumstances likely to give rise to any such investigation, inquiry or proceedings.

11.5 The Company is not affected by any existing or pending decisions, judgments, orders or rulings of any relevant government body, agency or authority responsible for enforcing the Competition Law of any jurisdiction and the Company has not given any undertakings or commitments to such bodies which affect the conduct of the business.

11.6 The Company is not in receipt of any payment, guarantee, financial assistance or other aid from the government or any state body which was not, but should have been, notified to the European Commission under article 88 of the EC treaty for decision declaring such aid to be compatible with the common market.

12 Contracts

12.1 The definition in this paragraph applies in this agreement.

Material Contract: an agreement or arrangement to which the Company is a party or is bound by and which is of material importance to the business, profits or assets of the Company.

12.2 Except for the agreements and arrangements disclosed, the Company is not a party to or subject to any agreement or arrangement which:

(a) Is a Material Contract; or

(b) Is of an unusual or exceptional nature; or

(c) Is not in the ordinary and usual course of business of the Company; or

(d) May be terminated as a result of any change of control of the Company; or

(e) Restricts the freedom of the Company to carry on the whole or any part of its business in any part of the world in such manner as it thinks fit; or

(f) Involves agency or distributorship; or

(g) Involves partnership, joint venture, consortium, joint development, shareholders or similar arrangements; or

(h) Is incapable of complete performance in accordance with its terms within six months after the date on which it was entered into; or

(i) Cannot be readily fulfilled or performed by the Company on time and without undue or unusual expenditure of money and effort; or

(j) Involves or is likely to involve an aggregate consideration payable by or to the Company in excess of £20,000; or

(k) Requires the Company to pay any commission, finders' fee, royalty or the like; or

(l) Is for the supply of goods and/or services by or to the Company on terms under which retrospective or future discounts, price reductions or other financial incentives are given; or

(m) Is not on arm's length terms; or

(n) Provides for payments or other dealings in or calculated by reference to the euro.

12.3 Each Material Contract is in full force and effect and binding on the parties to it. The Company has not defaulted under or breached a Material Contract and so far as the Vendor is aware no other party to a Material Contract has defaulted under or in any material respect breached such a contract.

12.4 No notice of termination of a Material Contract has been received or served by the Company and there are no grounds for determination, rescission, avoidance, repudiation or a material change in the terms of any such contract.

13 Transactions with the Vendor

13.1 There is no outstanding indebtedness or other liability (actual or contingent) and no outstanding contract, commitment or arrangement between the Company and any of the following:

(a) The Vendor or any member of the Vendor's Group or person connected with the Vendor; or

(b) Any director of a member of the Vendor's Group or any person connected with such a member or director.

13.2 Neither the Vendor, nor any person connected with the Vendor, is entitled to a claim of any nature against the Company or has assigned to any person the benefit of a claim against the Company to which the Vendor or a person connected with the Vendor would otherwise be entitled.

14 Finance and guarantees

14.1 The Company has no borrowings other than Company Indebtedness.

14.2 Save for the Company Charges no guarantee, mortgage, charge, pledge, lien, assignment or other security agreement or arrangement has been given by or entered into by the Company or any third party in respect of borrowings or other obligations of the Company.

14.3 The Company does not have any outstanding loan capital, or has lent any money that has not been repaid, and there are no debts owing to the Company other than debts that have arisen in the normal course of business.

14.4 The Company has not:

(a) Factored any of its debts or discounted any of its debts or engaged in financing of a type which would not need to be shown or reflected in the accounts; or

(b) Waived any right of set-off it may have against any third party.

14.5 No debt included in the Accounts or which has subsequently arisen in favour of the Company has arisen otherwise than in the ordinary course of trade of the Company.

14.6 No indebtedness of the Company is due and payable and no security over any of the assets of the Company is now enforceable, whether by virtue of the stated maturity date of the indebtedness having been reached or otherwise. The Company has not received any notice whose terms have not been fully complied with and/or carried out from any creditor requiring any payment to be made and/or intimating the enforcement of any security which it may hold over the assets of the Company.

14.7 The Company has not given or entered into any guarantee, mortgage, charge, pledge, lien, assignment or other security agreement or arrangement or is responsible for the indebtedness, or for the default in the performance of any obligation, of any other person.

14.8 The Company is not subject to any arrangement for receipt or repayment of any grant, subsidy or financial assistance from any government department or other body.

15 Insolvency

15.1 The Company:

(a) is not insolvent or unable to pay its debts within the meaning of the Insolvency Act 1986 or any other insolvency legislation applicable to the Company concerned; and

(b) Has not stopped paying its debts as they fall due.

15.2 No step has been taken to initiate any process by or under which the ability of the creditors of the Company to take any action to enforce their debts is suspended, restricted or prevented or a person is appointed to manage the affairs, business and assets of the Company.

15.3 In relation to the Company:

(a) No administrator has been appointed;

(b) No documents have been filed with the court for the appointment of an administrator; and

(c) No notice of an intention to appoint an administrator has been given by the Company, its directors or by a qualifying floating charge holder (as defined in paragraph 14 of schedule bi to the Insolvency Act 1986).

15.4 No process has been initiated which could lead to the Company being dissolved and its assets being distributed among the Company's creditors, shareholders or other contributors.

15.5 No distress, execution or other process has been levied on an asset of the Company.

16 Assets

16.1 The Company is the full legal and beneficial owner without encumbrance of, and has good and marketable title to and has possession and control of all the assets included in the Accounts, any assets acquired since the Accounts Date and all other assets used by the Company, except for those disposed of since the Accounts Date in the normal course of business.

16.2 The Purchaser's acquisition of the Shares and entry into this Agreement shall afford it all rights and assets both tangible and intangible sufficient to enable the Company to conduct the Business hereafter in the manner in which it has been conducted immediately prior to Completion.

17 Condition of plant and equipment and stock in trade

The stock-in-trade of the Company is in good condition and is capable of being sold by the Company in the ordinary course of its business in accordance with its current price list without discount, rebate or allowance to a buyer save for promotional discounting in the ordinary course.

18 Environmental

18.1 The definitions in this paragraph apply in this agreement.

Hazardous Substances means any natural or artificial substance (whether solid, liquid or gas and whether alone or in combination with any other substance or radiation), capable of causing harm to any human or other living organism or the Environment.

Environment means air, water and land, all living organisms and natural or man-made structures.

Environmental Law means any law in so far as it relates to Environmental Matters.

Environmental Matters means the protection of human health, the protection and condition of the Environment, the condition of the workplace, the generation, transportation, storage, treatment, emission, deposit and disposal of any Hazardous Substance or Waste.

Waste means all waste, including any unwanted or surplus substance irrespective of whether it is capable of being recycled or recovered or has any value.

18.2 All permits, consents and licences required or issued under Environmental Law which are necessary for carrying on the Business are in full force and effect and have been complied with and so far as the Vendor is aware there are no circumstances (including, but not limited to, the sale of the Shares to the Purchaser) likely to give rise to the modification, suspension or revocation of or lead to the imposition of unusual or onerous conditions on, or to prejudice the renewal of any of those permits, consents or licences.

18.3 So far as the Vendor is aware, the Company has at all times complied with all Environmental Laws in all material respects.

18.4 No proceeding or action relating to Environmental Law has been taken, is so far as the Vendor is aware pending or threatened against the Company or any employees, directors or officers of the Company by any competent authority or any other person.

19 Intellectual Property Rights

19.1 Complete and accurate particulars are set out in Part 2 of Schedule 4 of all registered Intellectual Property Rights (including applications for such rights) owned by the Company.

19.2 The Data Room contains particulars of material licences, agreements, authorisations and permissions granted in writing under which:

(a) the Company uses or exploits Intellectual Property Rights owned by any third party; or

(b) the Company has licensed or agreed to license Intellectual Property Rights to, or otherwise permitted the use of any Intellectual Property Rights by, any third party.

19.3 Except as referred to in the immediately preceding sub-paragraph, the Company is the sole legal and beneficial owner of (or applicant for) the Intellectual Property Rights set out in Part 2 of Schedule 4, free from all Encumbrance.

19.4 The Company does not require any Intellectual Property Rights other than those set out in Schedule 4 in order to carry out its activities.

19.5 The Intellectual Property Rights set out in Part 2 of Schedule 4 are, so far as the Vendor is aware, subsisting and so far as the Vendor is aware nothing has been done or not been done as a result of which any of them has ceased to be subsisting. In particular:

(a) all application and renewal fees for the maintenance or protection of such rights have been paid on time;

(b) so far as the Vendor is aware all material confidential information (including know-how and trade secrets) owned or used by the Company has been kept confidential and has not been disclosed to third parties (other than parties who have signed written confidentiality undertakings in respect of such information, details of which are set out in the Disclosure Letter);

(c) no mark, trade name or domain name identical or similar to any of the Intellectual Property Rights set out in Part 2 of Schedule 4 has been registered, or so far as the Vendor is aware is being used by any person in the same or a similar business to that of the Company, in any country in which the Company has registered or is using that mark, trade name or domain name; and

(d) so far as the Vendor is aware there are and have been no claims, challenges, disputes or proceedings, pending or threatened, in relation to the ownership or use of such rights.

19.6 So far as the Vendor is aware there has been no infringement by any third party of any Intellectual Property Right set out in Part 2 of Schedule 4, nor any third party breach of confidence or passing off in relation to the business and assets of the Company and no such infringement, breach of confidence or passing off is, so far as the Vendor is aware, current or anticipated.

19.7 The activities of the Company have neither:

(a) infringed the Intellectual Property Rights of any third party; nor

(b) constituted any breach of confidence or passing off in relation to any third party, in either case in any country in which the Company is trading.

19.8 A Change of Control of the Company will not result in the termination of, or have a material affect on any of the Intellectual Property Rights set out in Schedule 4.

20 Information technology

20.1 The definitions in this paragraph apply in this Agreement.

IT System: all computer hardware (including network and telecommunications equipment) and software (including associated preparatory materials, user manuals and other related documentation) owned, used, leased or licensed by or to the Company located at the Property through which the Business is carried on together with the SAGE franchise system software and related server wheresoever situate.

20.2 The IT System has been properly maintained, is in good working order and is sufficient for the purposes of the Business as currently carried on by the Vendor.

20.3 The Company is the registered owner of the domain name utilising the name Bear Factory. So far as the Vendor is aware, the Company owns or has sufficient licences to use the Intellectual Property in the software code relating to the operation of the associated website.

21 Employees, etc.

21.1 Particulars of Employees

The particulars of all Employees annexed to the Disclosure Letter show the name of the relevant Vendor Group Company that employs them, the job title, date of commencement of employment, type of contract (whether full or part-time or other) and date of birth of every Employee.

21.2 Remuneration and benefits

The particulars annexed to the Disclosure Letter show all remuneration and other benefits:

(a) actually provided; and

(b) which the Company is bound to provide (whether now or in the future);

to each Employee.

21.3 Notice periods

The terms of employment of all Employees are such that their employment may be terminated by not more than three months' notice given at any time without liability for any payment including by way of compensation or damages (except for unfair dismissal or a statutory redundancy payment).

21.4 Changes since the Accounts Date

Since the Accounts Date the Company has not made any changes to the emoluments or benefits of or any bonus to any of their respective Employees and the Company is under no obligation to make any such changes with or without retrospective operation.

21.5 Claims by Employees

No past or present Employee (or any employee of a predecessor in business) has any claim or right of action against the Company including (but not limited to) any claim:

(a) in respect of any accident or injury which is not fully covered by insurance; or

(b) for breach of any contract of service or for services; or

(c) for loss of office or arising out of or connected with the termination of his office or employment; or

(d) under any legislation applying in England and Wales affecting contractual or other relations between employers and their employees or workers, including but not limited to any legislation and any amendment, extension or re-enactment of such legislation and so far as the Vendor is aware any claim arising under European treaty provisions or directives

and no event or inaction has occurred which could or might give rise to any such claim of which the Company is aware.

21.6 Miscellaneous

21.6.1 Every Employee who requires a work permit to work in the United Kingdom has a current work permit or other permission and all necessary permission to remain in the United Kingdom.

21.6.2 The acquisition of the Shares by the Purchaser will not enable any Employee to terminate his/her employment or receive any payment or other benefit.

21.6.3 Neither the Vendor nor the Company is involved in any industrial or trade dispute or negotiation regarding a claim with any trade union, group or organisation of employees or their representatives representing Employees and so far as the Vendor is aware there is nothing likely to give rise to such a dispute or claim other than the Employee Transfer.

21.6.4 No subject access requests made to the Vendor or the Company by Employees are outstanding and the Vendor and the Company have complied in all material respects with the provisions of the Data Protection Act 1998 in respect of all personal data held or processed by them relating to the Employees.

21.6.5 Neither the Vendor nor the Company will seek to procure that an Employee ceases to work for the Company (whether by resignation or otherwise).

21.6.6 There are no sums owing to or from any Employee other than reimbursement of expenses, wages for the current salary period and holiday pay for the current holiday year.

21.6.7 Neither the Vendor nor the Company has offered, promised or agreed to any future variation in the employment contract of any Employee.

21.6.8 In respect of each Employee, the Vendor and the Company have:

(a) performed all obligations and duties they are required to perform (and settled all outstanding claims), whether arising under contract, statute, at common law or in equity or so far as the Vendor is aware under any treaties including the EC Treaty or laws of the European Community or otherwise; and

(b) complied with the terms of any relevant agreement or arrangement with any trade union, employee representative or body of employees or their representatives (whether binding or not); and

(c) maintained adequate, suitable and up to date records.

22 Pensions

22.1 Particulars

22.1.1 The Vendor's Group Personal Pension Scheme operated by Scottish Equitable (**Pension Scheme**) is the only arrangement (other than the State benefits system) under which the Employing Company has any obligation to provide or contribute towards retirement and death benefits in respect of the Employees and no proposal or announcement has been made to any Employee about the introduction of any arrangement to provide such benefits.

22.1.2 The Vendor has provided the Buyer with:

(a) a list of all Employees in respect of whom it contributes to the Pension Scheme; and

(b) details of the liability of the Employing Company to contribute to the Pension Scheme in respect of those Employees.

22.1.3 All contributions for the period up to Completion due from the Employing Company to the Pension Scheme in respect of Employees have been paid and, apart from the liability to

contribute referred to at paragraph 22.1.2, the Employing Company has no liability to contribute to or in respect of the Pension Scheme in any respect.

22.1.4 The Employing Company has facilitated access for the Employees who are not members of the Pension Scheme to a designated stakeholder scheme as required by Section 3 of the Welfare Reform and Pensions Act 1999.

22.1.5 No proposal or announcement has been made to any Employee about the introduction, continuance, increase or improvement of any pension, lump sum, death, ill health, disability or accident benefit.

22.1.6 So far as the Vendor is aware, no claims or complaints have been made or are pending or threatened in relation to the Pension Scheme or in respect of the provision of (or failure to provide) pension, lump sum, death, ill health, disability or accident benefits in relation to any of the Employees and so far as the Vendor is aware there is no fact or circumstance likely to give rise to such claims or complaints.

23 Property

23.1 The definitions in this paragraph apply in this agreement.

Current Use: the use for each Leasehold Property as set out in the Leases.

Lease: the lease under which each Leasehold Property is held and 'Leases' shall be construed accordingly.

Leasehold Properties: the leasehold Properties set out in Schedule 3 and Leasehold Property means any one of them or part of parts of any one of them.

Previously-Owned Land and Buildings: land and buildings that have, at any time before the date of this agreement, been owned (under whatever tenure) and/or occupied and/or used by the Company, but which are either no longer owned, occupied or used by the Company, or are owned, occupied or used by one of them but pursuant to a different lease, licence, transfer or conveyance.

Planning Acts: the Town and Country Planning Act 1990; the Planning (Listed Buildings and Conservation Areas) Act 1990; the Planning (Hazardous Substances) Act 1990; the Planning (Consequential Provisions) Act 1990; the Planning and Compensation Act 1991; the Planning and Compulsory Purchase Act 2004; and any other legislation from time to time regulating the use or development of land.

Properties: the Leasehold Properties and Property means any one of them or any part or parts of any one of them.

Property Statutes: the Public Health Acts; the Occupiers Liability Act 1957; the Offices, Shops and Railway Premises Act 1963; the Health and Safety at Work etc. Act 1974; the Control of Pollution Act 1974; the Occupiers Liability Act 1984; the Environmental Protection Act 1990; the Construction (Design and Management) Regulations 1994; the Environmental Protection Act 1995; the Disability Discrimination Act 1995; the Control of Asbestos at Work Regulations 2002; and all regulations, rules and delegated legislation under, or relating to, such statutes.

Statutory Agreement: an agreement or undertaking entered into under Section 18 of the Public Health Act 1936; Section 52 of the Town and Country Planning Act 1971; Section 33 of the Local Government (Miscellaneous Provisions) Act 1982; Section 106 of the Town and Country Planning Act 1990; Section 104 of the Water Industry Act 1991; and any other legislation (later or earlier) similar to these statutes.

23.2 The particulars of the Properties set out in Schedule 3 are true, complete and accurate.

23.3 The Properties are the only land and buildings owned, used or occupied by the Company.

23.4 So far as the Vendor is aware the Company does not have any right of ownership, right of use, option, right of first refusal or contractual obligation to purchase, or any other legal or equitable right, estate or interest in any land or buildings other than the Properties.

23.5 The Company is solely legally and beneficially entitled to each of the Properties and confirms that so far as it is aware each of the Properties has a good and marketable title which for the avoidance of doubt means that each of the Properties are able to be used for the Current Use and there is nothing in the title which would prevent the transfer or charging of any of the Leases in the open market in the jurisdictions that they are located save as provided for in the terms of each Lease

23.6 The Vendor is not aware of any actual or contingent liability in respect of Previously-Owned Land and Buildings.

23.7 Neither the Company, nor any company that is or has at any time been a subsidiary of the Company, has given any guarantee or indemnity for any liability relating to any of the Properties.

23.8 The Vendor is not aware of any circumstance that could render any transaction affecting the title of the Company to any of the Properties liable to be set aside under the Insolvency Act 1986.

23.9 There are no insurance policies relating to the Company's title to the Lease for each of the Properties with the deeds.

23.10 So far as the Vendor is aware, in relation to each Lease, each lessee, tenant, licensee or occupier has observed and performed in all material respects all covenants, restrictions, stipulations and other encumbrances and as far as the Vendor is aware there has not been any waiver of or acquiescence to any breach of them.

23.11 In relation to each Lease, all principal rent and additional rent and all other sums payable by each lessee, tenant, licensee or occupier under each Lease (Lease Sums) have been paid as and when they became due and no Lease Sums have been:

(a) Set off or withheld; or

(b) Commuted, waived or paid in advance of the due date for payment.

The Properties are not the subject of any agreement for sale, option, right of pre-emption or right of first refusal save as provided for in the Leases

23.12 The Company has not received written notice that there has been a breach of any covenant, restriction, stipulation and other encumbrance affecting the Properties.

23.13 So far as the Vendor is aware there are no circumstances which (with or without taking other action) would entitle any third party to exercise a right of entry to, or take possession of all or any part of the Properties, or which would in any other way affect or restrict the continued possession, enjoyment or use of any of the Properties.

23.14 The Vendor is not aware of any matters which are registered as local land charges or, although not registered, are capable of registration as local land charges.

23.15 No claim or liability (contingent or otherwise) under the Planning Acts in respect of the Properties, or any Statutory Agreement affecting the Properties, are outstanding, nor are the Properties the subject of a notice to treat or a notice of entry, and no notice, order resolution or proposal has been published for the compulsory acquisition, closing, demolition or clearance

of the Properties, and the Company is not aware of any matter or circumstances which would lead to any such notice, order, resolution or proposal.

23.16 The Company has not received notice of any breach of any applicable statutory and bye- law requirement or any regulation, rule and delegated legislation, relating to the Properties and their current use, including (without limitation) all requirements under the Property statutes.

23.17 Each of the Properties is in a state of repair and condition sufficient to enable the Current Use to be carried out therefrom

23.18 There are no development works, redevelopment works or fitting-out works outstanding in respect of any of the Properties.

23.19 There exists no dispute between the Company and the owner or occupier of any other premises adjacent to or neighbouring the Properties.

24 Accounts

24.1.1 The Accounts have been prepared in accordance with the Companies Acts and with accounting standards, policies, principles and practices generally accepted in the UK and in accordance with the law of that jurisdiction.

24.2 The Accounts have been audited by an auditor or firm of accountants qualified to act as auditors in the UK and the auditors' report(s) required to be annexed to the Accounts is unqualified.

24.3 The Accounts show a true and fair view of the affairs of the Company as at the Accounts Date and of the profit and loss of the Company for the financial year ended on that date.

24.4 The Accounts have been filed and laid before the Company in general meeting in accordance with the requirements of the Companies Acts.

24.5 The profit and loss accounts set out in the Management Accounts have been prepared on a consistent basis and fairly reflect in all material respects the financial and trading position of the Company as at the date to which they were prepared, except in the following respects:

(a) taxation;

(b) interest;

(c) group management charges;

(d) amortisation of goodwill;

(e) cost of sales;

(f) foreign currency movements;

(g) any group provisions or adjustments which have been processed through the management accounts of the Company; and

(h) the Company's concession at the Vendor's store in Regent Street, London was not included in the Management Accounts until April 2005.

25 Financial and other records

25.1 All financial and other records of the Company:

(a) Have been properly prepared and maintained;

(b) Constitute an accurate record of all matters required by law to appear in them;

(c) Do not contain any material inaccuracies or discrepancies; and

(d) Are in the possession of the Company.

25.2 No notice has been received or allegation made that any of those records are incorrect or should be rectified.

25.3 All statutory records, including accounting records, required to be kept or filed by the Company have been properly kept or filed and comply with the requirements of the companies acts.

25.4 All deeds and documents belonging to the Company are in the possession of the Company.

26 Changes since Accounts Date

26.1 Since the Accounts Date:

(a) The Company has conducted its business in the normal course and as a going concern;

(b) There has been no material adverse change in the turnover, financial or trading position of the Company;

(c) The Company has not issued or agreed to issue any share or loan capital;

(d) No dividend or other distribution of profits or assets has been, or agreed to be, declared, made or paid by the Company;

(e) Save in respect of the costs of the Refit and Refresh Programme relating to the Company's stores (which has now been completed), details of which are set out in the Data Room, the Company has not borrowed or raised any money or taken any form of financial security and no capital expenditure has been incurred on any individual item by the Company in excess of £25,000 and the Company has not acquired, invested or disposed of (or agreed to acquire, invest or dispose of) any individual item in excess of £25,000;

(f) No shareholder resolutions of the Company have been passed other than as routine business at the annual general meeting;

(g) There has been no abnormal increase or reduction of stock in trade;

(h) None of the stock in trade reflected in the Accounts has realised an amount less than the value placed in it in the Accounts; and

(i) Save for promotional discounts in the ordinary course, the Company has not offered price reductions or discounts or allowances on sales of stock in trade, or sold stock in trade at less than cost price.

27 Effect of Sale of Shares

Neither the acquisition of the Shares by the Purchaser nor compliance with the terms of this Agreement will:

(a) entitle any person to receive from the Company any finder's fee, brokerage or other commission in connection with the purchase of the Shares by the Purchaser; or

(b) so far as the Vendor is aware result in any customer or supplier being entitled to cease dealing with the Company or to reduce substantially its existing level of business or to change the terms on which it deals with the Company; or

(c) so far as the Vendor is aware result in a breach of contract, law, regulation, order, judgment, injunction, undertaking, decree or other like imposition.

Part 2 Tax Warranties

28 General

28.1 All notices, returns (including any land transaction returns), reports, accounts, computations, statements, assessments and registrations and any other necessary information submitted by the Company to any Tax Authority for the purposes of Taxation have been made on a proper basis, were punctually submitted, were accurate and complete in all material respects when supplied and remain accurate and complete in all material respects and there is no open material dispute with a Tax Authority.

28.2 All Tax for which the Company is or has been liable or is liable to account for has been duly paid (insofar as such Tax ought to have been paid).

28.3 The Company has not made any payments representing instalments of corporation tax pursuant to the Corporation Tax (Instalment Payments) Regulations 1998 in respect of any current or preceding accounting periods and is not under any obligation to do so.

28.4 The Company has not paid since the date of its incorporation nor is liable to pay any material penalty, fine, surcharge or interest charged by virtue of the provisions of the TMA 1970 or any other Taxation Statue.

28.5 The Company has not within the past 12 months been subject to any non routine visit, audit, investigation (so far as the Warranties are aware), discovery or access by any Taxation Authority.

28.6 The amount of Tax chargeable on the Company during any accounting period ending on or within the six years before Completion has not, to any material extent, depended on any concession, agreements or other formal or informal arrangement with any Tax Authority.

28.7 All transactions in respect of which any clearance or consent was required from any Tax Authority have been entered into by the Company after such consent or clearance has been properly obtained, any application for such clearance or consent has been made on the basis of full and accurate disclosure of all relevant material facts and considerations, and all such transactions have been carried into effect only in accordance with the terms of the relevant clearance or consent.

28.8 The Company has duly submitted all claims, disclaimers and elections the making of which has been assumed for the purposes of the Accounts.

28.9 The Company is not liable to pay to any person (including any Tax Authority) Tax of any other person where that other person has failed to discharge liability to Tax.

28.10 The Company has sufficient records to determine the tax consequence which would arise on any disposal or realisation of any asset owned at the Account Date or acquired since that date but prior to Completion.

29 Capital allowances

29.1 No event has occurred since the Accounts Date (otherwise than in the ordinary course of business) whereby any balancing charge may fall to be made against, or any disposal value may fall to be brought into account by the Company under the Capital Allowances Act 2001 (or any other legislation relating to capital allowances).

30 Distributions

30.1 No distribution or deemed distribution within the meaning of sections 209, 210 or 211 of ICTA 1988 has been made by the Company in the last six years except dividends shown in the Company's Audited Accounts and the Company is not bound by law to make any such distribution.

30.2 No rents, interest, annual payments or other sums of an income nature paid by the Company or which the Company is under an existing obligation to pay in the future are wholly or partially disallowable as deductions, management expenses or charges in computing profits for the purposes of corporation tax.

30.3 The Company has not within the last six years been engaged in, nor been a party to, any of the transactions set out in sections 213 to 218 (inclusive) of ICTA 1988, nor has it made or received a chargeable payment as defined in section 218(1) of ICTA 1988.

31 Loan Relationships

31.1 All interests, discounts and premiums payable by the Company in respect of its loan relationships (within the meaning of section 81 of the Finance Act 1996) are eligible to be brought into account by the Company as a debit for the purposes of Chapter II of Part IV of the Finance Act 1996 at the time and to the extent that such debits are recognised in the statutory accounts of the Company

31.2 There are no circumstances whether arising in respect of a period before or after Completion in connection with the making of any loan by the Company prior to Completion whereunder Section 419 ICTA could take effect.

32 Close companies

The Company is not and has not within the last six years been a close company within the meaning of sections 414 and 415 of ICTA 1988.

33 Intangible assets

33.1 For the purposes of this paragraph 33, references to intangible fixed assets mean intangible fixed assets and goodwill within the meaning of Schedule 29 to the Finance Act 2002 and references to an intangible fixed asset shall be construed accordingly.

33.2 No claims or elections have been made by the Company under Part 7 of, or paragraph 86 of Schedule 29 to, the Finance Act 2002 in respect of any intangible fixed asset of the Company.

33.3 Since the Accounts Date:

(a) the Company does not own an asset which has ceased to be a chargeable intangible asset in the circumstances described in paragraph 108 of Schedule 29 to the Finance Act 2002;

(b) the Company has not realised or acquired an intangible fixed asset for the purposes of Schedule 29 to the Finance Act 2002; and

(a) no circumstances have arisen which have required, or will require, a credit to be brought into account by the Company on a revaluation of an intangible fixed asset.

34 Company Residence and Overseas Interests

34.1 The Company has since incorporation been resident in the United Kingdom for corporation tax purposes and has not at any time since incorporation been treated for the purposes of any double taxation arrangements having effect by virtue of section 249 of the Finance Act 1994, section 788 of ICTA 1988 or for any other tax purpose as resident in any other jurisdiction.

35 Overseas Interests

35.1 The Company does not hold any interest in a controlled foreign company within section 747 of ICTA 1988, and the Company does not have any material interest in an offshore fund as defined in section 759 of ICTA 1988.

35.2 The Company does not have a permanent establishment outside the UK.

36 Transfer Pricing

The Company has not received any notice of enquiry from HM Revenue & Customs in relation to section 770A of, or Schedule 28AA to, ICTA 1988 in respect of non-arm's length dealings by the Company and, so far as the Seller is aware, there are no circumstances existing at Completion which will give rise to an adjustment by HM Revenue & Customs under section 770A of, or Schedule 28AA to, ICTA 1988.

37 VAT

37.1 The Company is a taxable person and is duly registered for the purposes of VAT with quarterly prescribed accounting periods, such registration not being pursuant to paragraph 2 of Schedule 1 to the VATA 1994 or subject to any conditions imposed by or agreed with HM Revenue & Customs and the Company is not under a duty to make monthly payments on account under the Value Added Tax (Payments on Account) Order 1993.

37.2 All supplies made by the Company are taxable supplies and the Company has not been denied credit for input tax by reason of the operation of sections 25 and 26 of the VATA 1994 in the last three years.

37.3 The Company is not or has not been for VAT purposes a member of any group of companies (other than the group comprising the Company and the Subsidiary alone) and, so far as the Vendor is aware, no act or transaction has been effected in consequence whereof the Company is or may be held liable for any VAT arising from supplies made by another company and no direction has been given by a Tax Authority under Schedule 9A to the VATA 1994 as a result of which the Company would be treated for the purposes of VAT as a member of a group.

37.4 For the purposes of paragraph 3(7) of Schedule 10 to the VATA 1994, the Company or any relevant associates of the Company (within the meaning of paragraph 3(7) of Schedule 10 to the VATA 1994) has only exercised the election to waive exemption from VAT (pursuant to paragraph 2 of Schedule 10 to the VATA 1994) in respect of those Properties listed (as having been the subject of such an election) in Schedule 3:

(a) such elections have effect and any notification and information required by paragraph 3(6) of Schedule 10 to the VATA 1994 have been given and any permission required by paragraph 3(9) of Schedule 10 to the VATA 1994 has been properly obtained; and

(b) no election has been disapplied or rendered ineffective by virtue of the application of the provisions of paragraph 2(3AA) of Schedule 10 to the VATA 1994.

37.5 The Company does not own any assets which are capital items subject to the capital goods scheme under Part XV of the VAT Regulations 1995.

37.6 The Company has not made any claim for bad debt relief under section 36 of the VATA 1994 in the last three years.

38 Stamp duty and stamp duty land tax

38.1 Any document that may be necessary to prove the title of the Company to any asset which is owned by the Company at Completion or any document which the Company needs to enforce or produce in evidence in the UK is duly stamped for stamp duty purposes.

38.2 Neither entering into this agreement nor Completion will result in the withdrawal of any stamp duty or stamp duty land tax relief granted on or before Completion which will affect the Company.

38.3 There is no chargeable interest (as defined under section 18, Finance Act 2003) acquired or held by the Company before Completion in respect of which the Warrantors are aware that an additional land transaction return will be required to be filed with a Taxation Authority and/or a payment of stamp duty land tax will require to be made on or after Completion.

38.4 The Company is not the purchaser in relation to a land transaction to which section 51 of the Finance Act 2003 applies.

Schedule 3 — Particulars of the Property

No.	Address	Original Tenant	Current Tenant	Guarantor	Title No.	Date of Lease/ Underlease and Parties	Length of term and commencement	Current Annual Rent and Rent Review Dates
1	Aberdeen Unit 30 Bon Accord Centre	The Bear Factory Limited	The Bear Factory Limited	None	Not applicable	Registered date 21 January 2003 made between Bon Accord (Aberdeen) Limited and Bon Accord (Aberdeen) (No. 2) Limited (1) and The Bear Factory Limited (2)	15 years commencing on 30 August 2002	£164,000 per annum Rent review on 29 September 2007 and 29 September 2012
2	Basingstoke Unit 17a Festival Place	The Bear Factory Limited	The Bear Factory Limited	None	Not registered	6 October 2003 made between Grosvenor Basingstoke Properties Limited and Grosvenor Basingstoke Management Limited (1) and The Bear Factory Limited (2)	15 Years commencing on 22 October 2002	£90,000 per annum Rent review on 22 October 2007 and 22 October 2012
3	Bluewater Unit L072 Lower Level South Mall Kent	The Bear Factory Limited	The Bear Factory Limited	None	Not registered	3 August 2001 made between Blueco Limited (1) and The Bear Factory Limited (2)	15 years from 24 June 2001	£217,500 per annum Rent review on 24 June 2006 and 24 June 2011
4	Brighton Unit 56 Churchill Square East Sussex	DSG Retail Limited	The Bear Factory Limited	None	ESX274189	12 January 2000 made between the Standard Life Assurance Co (1) and DSG Retail Limited (2)	15 years commencing 29 September 1998	£148,000 Rent review on 29 September 2008

No.	Address	Original Tenant	Current Tenant	Guarantor	Title No.	Date of Lease/ Underlease and Parties	Length of term and commencement	Current Annual Rent and Rent Review Dates
5	Bristol Unit BG1 and Basement storage Unit BM4 The Galleries (underlease)	The Bear Factory Limited	The Bear Factory Limited	None	BL78309	13 October 2000 between Norwich Union Life & Pensions Limited (1) and The Bear Factory Limited (2)	15 years commencing on 1 September 2000	£145,000 — TBC Rent review on 1 September 2005 and 1 September 2010
6	Birmingham Bull Ring SU330 Level 3 Bull Ring	The Bear Factory Limited	The Bear Factory Limited	None	WM873762	19 May 2004 made between Bull Ring No. 1 Limited and Bull Ring No. 2 Limited (1) and The Bear Factory Limited (2)	15 years from 24 June 2003	£209,000 together with turnover rent of 10% of turnover exceeding the basic yearly rent Rent review on 24 June 2008 and 24 June 2013
7	Cardiff 15 St Davids Way	British Shoe Corporation Limited	The Bear Factory Limited	None	WA275848	16 February 1984 between Heron Cardiff Properties Limited (1) and British Shoe Corporation Limited (2)	25 years commencing on 24 June 1981	£106,000
8	Chester 20 Newgate Row Grosvenor Shopping Centre (underlease)	The Bear Factory Limited	The Bear Factory Limited	None	Not registered	20 September 2002 made between Grosvenor Centre Limited (1) and The Bear Factory Limited (2)	15 years from the 24 June 2002	£139,000 Rent review on 24 June 2007 and 24 June 2012

No.	Address	Original Tenant	Current Tenant	Guarantor	Title No.	Date of Lease/ Underlease and Parties	Length of term and commencement	Current Annual Rent and Rent Review Dates
9	Cribbs Causeway Unit LR14 Lower Level The Mall South Gloucestershire	The Bear Factory Limited	The Bear Factory Limited	None	Not registered	20 July 2001 and made between the Prudential Insurance Company Limited (1) and The Bear Factory Limited (2)	Commencing on 20 July 2001 and expiring on 23 June 2016	Basic rent per annum £197,500 and 10% of turnover to the extent that exceeds the basic rent Rent review on 24 June 2006 and 24 June 2011
10	Dundrum Level 3 Dundrum Town Centre Dublin 16	The Bear Factory Limited	The Bear Factory Limited	None	Not registered	***[There is only an agreement for lease, the lease has not been completed][*** Agreement for Lease dated 15 November 2005 and made between Crossridge Investments Limited (1) and The Bear Factory trading as "The Bear Factory" (2)	25 years	€216,000 Rent review on the quarter day (being 1 January, 1 April, 1 July and 1 October) immediately preceding the term commencement date on the 5th, 10th, 15th, 20th and 25th year of the Term.
11	Dudley Unit U92 Phase 5 Merry Hill Centre West Midlands	Hobbies and Models Limited (t/a Toy Stack)	The Bear Factory Limited	None	Not registered	5 February 1999 and made between Chelsfield MH Investments Limited (1) and Hobbies and Models Limited (t/a Toy Stack) (2)	20 years commencing on 24 June 1998	£180,000 Rent review on 24 June 2008 and 24 June 2013

No.	Address	Original Tenant	Current Tenant	Guarantor	Title No.	Date of Lease/ Underlease and Parties	Length of term and commencement	Current Annual Rent and Rent Review Dates
12	Edinburgh RU43 Ocean Terminal Leith	The Bear Factory Limited	The Bear Factory Limited	None	Not applicable	Registered dated 2 June 2003 made between Ocean Terminal Limited (1) and The Bear Factory Limited (2)	From 21 October 2002 expiring on 13 October 2012	Rent is the higher of the Base Rent and the Turnover Rent (Turnover Rent is 10% of Turnover in a year excluding VAT) Rent review on 21 October 2007
13	Glasgow Unit 17 Buchanan Galleries	Hobbies and Models Limited	The Bear Factory Limited	None	Not applicable	Registered date 6 December 2000 made between AMP Buchanan Plc and Bredero Buchanan Plc and (1) Hobbies and Models Limited (2)	From 1 February 1999 expiring on 25 December 2023	£163,000 Rent review on 25 December 2008, 25 December 2013 and 25 December 2018
14	Glasgow Unit 67 Braehead Shopping Centre	The Bear Factory Limited	The Bear Factory Limited	None	Not applicable	Registered date 1 July 2003 made between Braehead Glasgow Limited and Braehead Park Investments Limited (1) and The Bear Factory Limited (2) (the **Retail Lease**)	15 years from 24 June 2002	£190,000 and 10% of turnover to the extent that exceeds the basic rent Rent review on 24 June 2007 and 24 June 2012

No.	Address	Original Tenant	Current Tenant	Guarantor	Title No.	Date of Lease/ Underlease and Parties	Length of term and commencement	Current Annual Rent and Rent Review Dates
15	Glasgow Storage Unit Braehead Shopping Centre	The Bear Factory Limited	The Bear Factory Limited	None	Not applicable	Registered date 18 March 2004 made between Braehead Glasgow Limited and Braehead Park Investments Limited and (1) and The Bear Factory Limited (2)	From 3rd February 2003 to the earlier of 23rd June 2017 and the date the Retail Lease ceases to be vested in The Bear Factory Limited unless the Retail Lease is replaced by another lease in the Braehead Shopping Centre	£1,395 per annum Rent Review on 24 June 2007 and 24 June 2012
16	Kingston Unit 57 The Bentall Centre Kingston Upon Thames	Hobbies and Models Limited	The Bear Factory Limited	None	Not registered	4 April 1996 made between The Norwich Union Life Insurance Society (1) and Hobbies and Models Limited (2)	15 years from 1 August 1992	£74,000
17	Manchester Unit L5 The Trafford Centre	The Bear Factory Limited	The Bear Factory Limited	None	Not registered	28 September 2001 made between The Trafford Centre Limited (1) and The Bear Factory Limited (2)	15 years from and including 31 July 2001	Basic rent of £235,000 and 12.5% of turnover to the extent that exceeds the basic rent Rent review on 31 July 2006 and 31 July 2011

No.	Address	Original Tenant	Current Tenant	Guarantor	Title No.	Date of Lease/ Underlease and Parties	Length of term and commencement	Current Annual Rent and Rent Review Dates
18	Metro Centre Unit 87 Ground Floor Tyne and Wear	British Shoe Corporation Limited	The Bear Factory Limited	None	TY218668	27 October 1988 made between the Church Commissioners for England (1) and British Shoe Corporation Limited (2)	24 1/4 years from 24 June 1988, up to and including 28 September 2012	£205,000 head rent (sublet income of £75,000 p.a. receivable) Rent review on 29 September 2006
19	Milton Keynes Unit SU15 Ground Floor Level Midsummer Place Bucks	The Bear Factory Limited	The Bear Factory Limited	Hamleys plc	Not registered	28 March 2001 made between Universities Superannuation Scheme Limited (1) and The Bear Factory Limited (2) and Hamleys plc (3)	15 years commencing on 24 June 2000	£145,000 per annum plus 8% of the turnover exceeds the basic rent Rent review on 24 June 2005 and 24 June 2010 **The 2005 rent review is currently being negotiated**
20	Norwich Unit UG03 Upper Ground Floor level Chapelfield	The Bear Factory Limited	The Bear Factory Limited	None	Not registered	***[There is only an agreement for lease, the lease has not been completed.]*** Agreement for lease dated 17 December 2003 made between Lendlease Norwich Limited (1) and Chapelfield GP Limited (2) and The Bear Factory Limited (3)	Proposed 15 years from the quarter day before the centre opening date	£130,000 per annum Rent review on each 5th anniversary of the commencement of the term

No.	Address	Original Tenant	Current Tenant	Guarantor	Title No.	Date of Lease/ Underlease and Parties	Length of term and commencement	Current Annual Rent and Rent Review Dates
21	Nottingham Unit 306 and storage unit Victoria Centre	Hobbies & Models Limited (t/a Toy Stack)	The Bear Factory Limited	None	Not registered	7 November 1997 made between Dusco (UK) Limited (1) and Hobbies & Models Limited (t/a Toy Stack) (2)	10 years from 29 September 1997	£107,850
22	Reading U33 Riverside Level Oracle Shopping Centre	The Bear Factory Limited	The Bear Factory Limited	None	BK387157	5 July 2001 made between Oracle Shopping Centre Limited and Oracle Nominees Limited (1) and The Bear Factory Limited (2) (underlease)	15 years commencing on 24 June 2001	Basic rent is £137,500 plus 10% of turnover received over and above the basic rent Rent review on 24 June 2006 and 24 June 2011
23	Reading Storage Unit For Unit 33 at Riverside Level Oracle Shopping Centre	The Bear Factory Limited	The Bear Factory Limited	None	Not registered	5 July 2001 made between Oracle Shopping Centre Limited and Oracle Nominees Limited (1) The Bear Factory Limited (2)	15 years commencing on the 24 June 2001	£15,000 Rent review on 24 June 2006 and 24 June 2011

No.	Address	Original Tenant	Current Tenant	Guarantor	Title No.	Date of Lease/ Underlease and Parties	Length of term and commencement	Current Annual Rent and Rent Review Dates
24	Sheffield Unit 75 (29 High Street) The Meadowhall Centre	Stead & Simpson Limited	The Bear Factory Limited	Hamleys plc	SYK355037	1 March 1995 made between Meadowhall Centre Limited (1) and Stead & Simpson Limited (2)	30 years commencing on 24 February 1995 and expiring on 3 September 2025	£280,000 Rent review on 25 December 2004, 2009 and 2014, 2019 and 2024 The rent is subject to a turnover rent plus 10% of turnover received over and above the basic rent ***[The 2004 rent review currently being negotiated]***
25	Solihull Unit 37A Touchwood West Midlands	The Bear Factory Limited	The Bear Factory Limited	None	Not registered	10 December 2001 made between Capita (LLRP) Trustee Limited and Lendlease Retail Partnership (1) and The Bear Factory Limited (2)	15 years from and including 24 June 2001	£140,000 Rent review on 24 June 2006 and 24 June 2011
26	Stirling Unit 8 Marches Mall Thistle Shopping Centre	The Bear Factory Limited	The Bear Factory Limited	None	Not applicable	Registered date 1 September 2003 and made between The Standard Life Assurance Company (1) and The Bear Factory Limited (2)	15 years from 21 October 2002	£80,000 Rent review on 21 October 2007 and 21 October 2012

No.	Address	Original Tenant	Current Tenant	Guarantor	Title No.	Date of Lease/ Underlease and Parties	Length of term and commencement	Current Annual Rent and Rent Review Dates
27	Telford Basement and Ground Floors Unit 20 Sherwood St Telford Shopping Centre	The Bear Factory Limited	The Bear Factory Limited	None	Not registered	12 March 2003 made between Telford Keystone Estates (No. 1) Limited and Telford Keystone Estates (No. 2) Limited (1) and The Bear Factory Limited (2)	15 years from 1 July 2002	£110,000 Rent Review on 1 July 2007, 1 July 2012 and 1 July 2017
28	Watford 43 The Harlequin Shopping Centre Watford	Hobbies and Models Limited (t/a Toy Stack)	The Bear Factory Limited	None	HD420443	2 March 1994 made between Capital & Counties Plc (1) and Hobbies and Models Limited (t/a Toy Stack) (2)	25 1/4 years from 29 September 1991	£221,750 8% of the amount by which the turnover exceeds the basic rent Rent review on 29 September 2006, 29 September 2011 and 29 September 2016
29	Watford Storage Unit No 20 The Harlequin Shopping Centre	Hobbies and Models Limited	The Bear Factory Limited	None	Not registered	27 October 2000 made between CSC Properties Limited (1) and Hobbies & Models Limited (2)	5 years commencing on 25 March 2000 (and including)	£11,430 No rent review

No.	Address	Original Tenant	Current Tenant	Guarantor	Title No.	Date of Lease/ Underlease and Parties	Length of term and commencement	Current Annual Rent and Rent Review Dates
30	West Thurrock Unit 283 Lakeside	Hobbies and Models Limited (t/a Toy Stack)	The Bear Factory Limited	None	EX500102	2 March 1994 made between Capital & Counties plc (1) and Hobbies and Models Limited (t/a Toy Stack) (2)	25 ¼ years from 24 June 1993	£276,000 rack rent equating to £220,800 base rent together with 8% that the annual turnover exceeds the basic rent Rent review of the basic rent on 24 June 2008, 24 June 2013 and 24 June 2018
31	West Quay Unit SU52 West Quay Shopping Centre Above Bar Southampton	The Bear Factory Limited	The Bear Factory Limited	None	Not registered	5 June 2001 made between West Quay Shopping Centre Limited (1) and The Bear Factory Limited (2)	15 years from 29 September 2000	£140,000 per annum together with 10% of the annual turnover that exceeds the basic rent Rent review on 29 September 2005 and 29 September 2010

Schedule 4 — Particulars of Intellectual Property Rights

(All registrations or applications are in the name of the Company unless otherwise stated)

1 Licences/assignments granted by the Company

The Marks referred to below are the “Bear Factory”, “The Bear Factory”, “BF” and “Ted the Tailor” trade marks and all other trade or service marks or names or logos and designs specified in the franchise manual.

Brief description of rights granted	Territory	Terms of agreement		Parties to agreement	
		Price	Period	Provider	Recipient
Franchise Agreement granting rights in the Marks	Kuwait, Saudi Arabia, UAE, Bahrain, Qatar and Lebanon	Royalties	10 Years from 14 May 2002	The Bear Factory Limited	Alshaya Trading Co W.L.L.
Franchise Agreement granting rights in the Marks	Turkey	Royalties	10 Years	The Bear Factory Limited	Alshaya Trading Co W.L.L.
Franchise Agreement granting rights in the Marks	Switzerland	Royalties	10 Years from 29 March 2003	The Bear Factory Limited	Waldmeier AG
Franchise Agreement granting rights in the Marks	Stockholm	Royalties	5 Years from 22 April 2002	The Bear Factory Limited	Baugur Sverige AB
Franchise Agreement granting rights in the Marks	Cyprus and Greece	Royalties	10 Years from 27 August 2003	The Bear Factory Limited	Maria Xenophontos Ioannou and Xenofoula Xenophontos

2 Registered and Pending Trade Marks

[This schedule is very large and has been circulated separately]

Schedule 5- Completion Accounts

1 Preparation of Completion Accounts

1.1 The Completion Accounts and the net current asset statement shall be prepared:

(a) under the historical cost convention and in accordance with the specific provisions of paragraph 2 of this Schedule;

(b) subject to paragraph (a) above, on a basis consistent with the accounting principles, policies and practices (including similar judgments made on matters of judgement) used in the preparation of the Accounts; and

(c) (so far as not inconsistent with paragraphs (a) and (b) above) in accordance with United Kingdom accounting standards and generally accepted accounting principles.

1.2 For the avoidance of doubt paragraph (a) shall take precedence over paragraph (b) and paragraph (c) shall take precedence over paragraph (b).

1.3 The Completion Accounts will be prepared on the basis that the business of the Company and the Subsidiary carried on at the Completion Date will be continued in the same manner thereafter and without regard to the consequences of any changes in the nature or conduct of such business or in the scale of its activities, product range or methods of operation or of any other changes whatsoever which are proposed, introduced or take effect on or after the Completion Date.

1.4 The Completion Accounts shall take the form set out in the pro-formas in paragraph 3 of this schedule.

1.5 The estimated Net Current Asset Value will be derived in respect of the specific line headings set out in the 'Net Current Asset Value' pro-forma in paragraph 3 of this schedule.

2 Specific Accounting Treatments

The following specific accounting treatments shall be applied in the preparation of the Completion Accounts:

2.1 Stock will be valued at the lower of invoice cost (including freight and duty) and net realisable value. Stock includes:

(a) all stock purchased by the Company located at the Company's stores and concessions (including at the Vendor's store in Regent Street, London) and at the Vendor's warehouse.

(b) stock in transit and any provisions consistent with the Company's Accounting Principles.

2.2 Debtors shall include those relating to franchises, concessions, internet sales and any other debtors arising in the normal course of the Company's business and shall be net of any bad debt provision.

2.3 Prepayments shall include those relating to rental payments, service charge payments and any other prepayments arising in the normal course of the Company's business.

2.4 Trade Creditors shall consist of those arising in the normal course of the Company's business.

2.5 Sundry Creditors and Accruals shall include VAT control account, rent free prepayments, net deferred freight and duty accruals and any other accruals arising in the normal course of the Company's business.

2.6 No accrual will be made for potential costs relating to the closure of stores.

2.7 For the avoidance of doubt, the following shall be excluded from the Completion Accounts:

(a) all cash including cash balances and overdrafts for all bank accounts in the Company's name

(b) Intercompany balances

(c) Corporation Tax and deferred taxation

3 Pro-formas

3.1 The numbers contained in the Pro-formas below are for example purposes only and relate to the Company's balance sheet as at December 2005 as provided in the data room.

3.2 Fixed Assets

Item	£k
Leasehold Properties	382
Fixtures & Fittings	3,788
Tangible Fixed Assets	4,170
Goodwill	7,378
Trademarks	109
Intangible Fixed Assets	7,487
Total Fixed Assets	11,657

3.3 Net Current Assets

Stock	1,417
Debtors	220
Sundry Debtors & Prepayments	355
Current Assets	1,992

Trade Creditors	(815)
Sundry Creditors and Accruals	(1,752)
Current Liabilities	(2,567)
Net Current Asset Value	575

Schedule 6 — Completion arrangements

1 Vendor's obligations at Completion

1.1 Board meetings

At Completion the Vendor shall procure that a board meeting of each of the Company and the Subsidiary is duly convened and held at which valid resolutions are passed to:

(a) (in the case of the Company only) approve the transfer referred to in paragraph 1.1(d) below for entry in the statutory books of the Company, subject to stamping;

(b) (in the case of the Company only) approve the payments to be made to or by the Company under Clause 6;

(c) appoint with effect from the end of the meeting as directors and secretary of each of the Company and the Subsidiary such persons as the Purchaser may nominate;

(d) (in the case of the Company only) approve the entering into by the Company of the Transitional Services Agreement and the Regent Street Concession Agreement;

(e) accept the resignations of the directors and secretary referred to in paragraph 1.2(f) below;

(f) change the accounting reference date of each of the Company and the Subsidiary to 31 December;

(g) change the registered office of each of the Company and the Subsidiary to St Stephens House, Arthur Road, Windsor, Berkshire SL4 1RU.

1.2 Delivery by the Vendor

At Completion the Vendor shall deliver to the Purchaser:

(a) the Disclosure Letter duly executed by the Vendor;

(b) the Tax Deed duly executed by the Vendor;

(c) minutes, certified as true by the secretary of each of the Company and the Subsidiary, of the board meetings referred to in paragraph 1.1 above;

(d) duly executed transfers of the Shares in favour of the Purchaser or its nominees together with the relevant share certificates;

(e) any power of attorney or other authority under which any transfer referred to above has been executed in each case duly stamped and executed;

(f) a letter in the agreed form executed as a deed from each of Alasdair Dunn, Nicholas Mather, and Katherine Anne Osborne resigning their respective offices with the Company and the Subsidiary (as appropriate) with effect from the closing of the board meeting referred to in paragraph 1.1, in each case stating that the person concerned has no claim against the Company or the Subsidiary (as appropriate) for breach of contract, compensation for loss of office, redundancy or on any other account whatsoever;

(g) the statutory books and registers up to date immediately prior to Completion, certificate(s) of incorporation and of incorporation on change of name and the common seal of each of the Company and the Subsidiary;

(h) the Regent Street Concession Agreement duly executed by the Vendor and the Company;

(i) the Property Documents;

(j) an undertaking from the Vendor's Solicitors to the Purchaser to deliver executed discharges in a form acceptable to the Purchaser (acting reasonably) of the Vendor Charges and the Company Charges;

(k) save as otherwise agreed by the Purchaser, any and all books, records, journals, ledgers, accounts, agreements and other documents (including, in the case of any such which are kept or maintained on computer or otherwise electronically, such printouts, disks, tapes and other copies as the Purchaser may require) of the Company together with such information and things as the Purchaser will need to access any of the foregoing provided that the Vendor shall be entitled for a period of 14 days following Completion to retain such accounting records as it deems reasonably necessary to enable it and its Accountants to prepare the Completion Accounts but only on the basis that the Purchaser and its Accountants are promptly provided with access to all such retained records and afforded all such reasonable assistance, including the provision of photocopies of the relevant records, as they may reasonably request;

(l) a copy, certified as correct by the secretary of the Vendor, of a minute of the board of directors of the Vendor approving the transaction hereby contemplated and authorising the signature, execution and completion (as appropriate) of this Agreement and the documents ancillary to this Agreement;

(m) a power of attorney in the agreed form authorising the Purchaser to exercise all the Vendor's rights as a shareholder of the Company until registration of the transfer of the Shares to the Purchaser; and

(n) the Transitional Services Agreement duly executed by the Vendor and the Company.

2 Purchaser's obligations at Completion

2.1 Consideration

The Purchaser shall pay the sum of £15,000,000 (fifteen million pounds sterling) to the Vendor's Solicitors Client Account by telegraphic transfer by way of the Consideration payable on Completion pursuant to Clause 3 (and the receipt of the Vendor's solicitors shall be a complete discharge of the Purchaser who shall not be required to enquire as to the distribution of that amount).

2.2 Delivery by the Purchaser

At Completion the Purchaser shall deliver to the Vendor:

(a) a copy, certified as correct by an authorised officer of the Purchaser, of a resolution of the board of directors of the Purchaser approving the transaction hereby contemplated and authorising the signature, execution and completion (as appropriate) of this Agreement and the documents ancillary to this Agreement;

(b) the Disclosure Letter duly executed by the Purchaser;

(c) the Tax Deed duly executed by the Purchaser;

(d) the Transitional Services Agreement duly executed by the Purchaser; and

(e) the Regent Street Concession Agreement duly executed by the Purchaser.

/s/ Nick L. Mather
Signed by)
for and on behalf of)
The Hamleys Group Limited)

/s/ Maxine Clark
Signed by)
for and on behalf of)
Build-A-Bear Workshop UK)
Holdings Limited)

/s/ Alasdair R. Dunn
Signed by)
for and on behalf of)
The Bear Factory Limited)

EXHIBIT 10.39

The Parties Listed in Schedule 1
Build-A-Bear Workshop, Inc.
Build-A-Bear Workshop UK Holdings Limited
Andrew Mackay

Sale and Purchase Agreement for sale of the entire issued share capital of Amsbra Limited

Date:	March 3, 2006
Document Number:	2309564.12
Matter Number:	0184713

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THIS AGREEMENT is dated March 3, 2006

PARTIES

(1) The persons listed in Part 2 of Schedule 1 (**Seller**);

(2) Build-A-Bear Workshop, Inc., a corporation organised under the laws of the state of Delaware whose principal office is at 1954 Innerbelt Business Centre, St. Louis, MO 63114-5760, USA in its capacity as Guarantor ("**BABW**");

(3) Build-A-Bear Workshop UK Holdings Limited, a company incorporated in England and Wales under number 05651132 whose principal office is at St Stephens House, Arthur Road, Windsor, Berkshire SL4 1RU (**Buyer**); and

(4) Andrew Mackay of 10 Roseberry Crescent, Edinburgh EH12 5JY (**AM**).

BACKGROUND

(A) The Company has an issued share capital of £39,894.56 divided into 2,737,149 ordinary voting 'A' shares of 1p each and 1,252,307 ordinary non-voting 'B' shares of 1p each.

(B) Further particulars of the Company at the date of this agreement are set out in Schedule 1, Part 1.

(C) The Seller has agreed to sell and the Buyer has agreed to buy the Sale Shares subject to the terms and conditions of this agreement.

AGREED TERMS

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Accounts: each of the audited financial statements of the Company up to the Accounts Date, including in each case the notes thereon and the auditor's and Directors' reports (copies of which are attached to the Disclosure Letter).

Accounts Date: 3lst December 2004.

'A' Ordinary Shares: all A ordinary voting shares in the capital of the Company.

'B' Ordinary Shares: all B ordinary non-voting shares in the capital of the Company.

BABW Loan: the loan of $4,425,000 from Build-A-Bear Workshop Franchise Holdings, Inc. to Amsbra Ltd.

Boldswitch Limited: a company registered in England and Wales under company number 02307096 whose registered office is at 10 Cornwall Terrace, London NW1 4QP.

Business: the business of the Company, namely the retail of build your own teddy bears.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in the City of London are open for business.

Buyer's Solicitors: Bryan Cave, 33 Cannon Street, London EC4M STE.

CAA 2001: the Capital Allowances Act 2001.

Claim and Substantiated Claim: have the meanings set out respectively in clause 8 (Limitations on claims).

Company: Amsbra Limited, a company incorporated and registered in England and Wales with company number 04537212 whose registered office is at St. Stephens House, Arthur Road, Windsor, Berkshire SL4 1RU further details of which are set out in Part 1 of Schedule 1.

Companies Acts: the Companies Act 1985 and the Companies Act 1989.

Completion: completion of the sale and purchase of the Sale Shares in accordance with this agreement.

Completion Date: has the meaning given in clause 5 (Completion).

Conditions: the conditions set out in Schedule 2 (Conditions).

Connected: in relation to a person, has the meaning contained in section 839 of the ICTA 1988.

Control: in relation to a body corporate, the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person:

(a) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate; or

(b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating that or any other body corporate,

and a Change of Control occurs if a person who controls any body corporate ceases to do so or if another person acquires control of it.

Director: each person who is a director or shadow director of the Company, the names of whom are set out in Part 1 of Schedule 1 .

Disclosed: fairly and clearly disclosed (with sufficient detail to identify the nature and scope of the matter disclosed) in or under the Disclosure Letter.

Disclosure Letter: the letter from the Warrantors to the Buyer with the same date as this agreement that is described as the disclosure letter, including the bundle of documents attached to it (Disclosure Bundle) and any further letter from the Warrantors to the Buyer on a date which is one day before the Completion Date which may contain further disclosures.

Encumbrance: any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, hypothecation, security, title, retention or any other security agreement or arrangement.

Event: has the meaning given in Schedule 5 (Tax covenant).

Faber France: a company incorporated in France whose registered office is at 1 Bis, Rue Lanneau, 75005 Paris.

AM Options: the 294,615 options held by AM over 235,692 'A' Ordinary Shares and 58,923 'B' Ordinary Shares.

Group: in relation to a company (wherever incorporated) that company, any company of which it is a Subsidiary (its holding company) and any other Subsidiaries of any such holding company; and each company in a group is a member of the group.

Unless the context otherwise requires, the application of the definition of Group to any company at any time will apply to the company as it is at that time.

Guarantor: BABW.

HMRC: HM Revenue & Customs.

ICTA 1988: the Income and Corporation Taxes Act 1988.

IHTA 1984: the Inheritance Tax Act 1984.

Individual Vendors: the Seller save for the Warrantors, Boldswitch Limited and Wittington Investments Limited.

Intellectual Property Rights: has the meaning given in paragraph 85 of Part 1 of Schedule 4 (Warranties).

Issued Shares: 3,989,456 issued and fully paid shares in the Company comprising 2,737,149 'A' Ordinary Shares and 1,252,307 'B' Ordinary Shares.

Lombard Finance Lease: an agreement with Lombard Finance Limited and the Company dated 8 April 2004 in relation to the stuffing machines, EPOS, computer equipment and air conditioning.

Management Accounts: the unaudited consolidated balance sheet and the unaudited consolidated profit and loss account of the Company (including, in each case, any notes thereon) for the period of 12 months ended 31 December 2005 (a copy of which is attached to the Disclosure Letter).

Option Holders: Steven Bedford, Rupert Ashe, Sian Jones, Greg Pickers, James Hobbs, and Laura Neaves.

Pension Scheme: The Build-A-Bear Workshop Group Stakeholder Pension Scheme.

Previously-owned Land and Buildings: has the meaning given in paragraph 115 of Part 1 of Schedule 4 (Warranties).

Properties: has the meaning given in paragraph 111 of Part 1 of Schedule 4 (Warranties).

Sale Shares: the Issued Shares.

Seller's Solicitors: Rosenblatt, 9-13 St. Andrew Street, London EC4A 3AF

Share Options: the 705,385 options held by the Option Holders at the date hereof to acquire 564,308 'A' Ordinary Shares and 141,077 'B' Ordinary Shares, a total of 705,385 shares in the Company.

Shareholders Agreement: an agreement between Amsbra Limited (1), the Investor Group (2), Rupert Ashe (3), Steven Bedford (4), Andrew Mackay (5) and The Trust Corporation of the Channel Islands Limited as the Trustees of the Granola Trust (6) dated 12 May 2003.

Subsidiary: in relation to a company wherever incorporated (a holding company) means a "subsidiary" as defined in section 736 of the Companies Act 1985 and any other company which is a subsidiary (as so defined) of a company which is itself a subsidiary of such holding company.

Unless the context otherwise requires the application of the definition of Subsidiary to any company at any time will apply to the company as it is at that time.

Tax Covenant: the tax covenant in the form set out in Schedule 5 (Tax covenant) to be entered into and delivered at Completion.

Tax or Taxation: has the meaning given in Schedule 5 (Tax covenant).

Tax Claim: has the meaning given in Schedule 5 (Tax covenant).

Tax Warranties: the Warranties in Part 2 of Schedule 4 (Warranties).

Taxation Authority: has the meaning given in Schedule 5 (Tax covenant).

Taxation Statute: has the meaning given in Schedule 5 (Tax covenant).

TCGA 1992: the Taxation of Chargeable Gains Act 1992.

TMA 1970: the Taxes Management Act 1970.

Transaction: the transaction contemplated by this agreement or any part of that transaction.

VATA 1994: the Value Added Tax Act 1994.

Warranties: the warranties in clause 7 (Warranties) and Schedule 4 (Warranties).

Warrantors: Rupert Ashe, Steven Bedford and Andrew Mackay.

Wittington Investments Limited: a company incorporated in England and Wales under company no. 00366054 and whose registered office is at Weston Centre, 10 Grosvenor Street, London WK 4QY.

1.2 Clause and schedule headings do not affect the interpretation of this agreement.

1.3 A **person** includes a corporate or unincorporated body.

1.4 Words in the singular include the plural and in the plural include the singular.

1.5 A reference to one gender includes a reference to the other gender.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.7 **Writing** or **written** includes faxes but not e-mail.

1.8 Documents in **agreed form** are documents in the form agreed by the parties or on their behalf and initialled by them or on their behalf for identification.

1.9 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.

1.10 Reference to this agreement include this agreement as amended or varied in accordance with its terms.

2. CONDITIONS

2.1 Completion of this agreement is subject to the Conditions in Schedule 2 being satisfied or waived by the date and time provided in clause 2.4.

2.2 If any of the Conditions are not satisfied or waived by the date and time referred to in clause 2.1 and clause 2.4, this agreement shall cease to have effect immediately after that date and time except for:

(a) the provisions set out in clause 2.3; and

(b) any rights or liabilities that have accrued under this agreement.

2.3 The following provisions shall continue to have effect, notwithstanding failure to waive or satisfy the Conditions:

(a) clause 1 (Interpretation);

(b) clause 2.2 and clause 2.3 (Conditions);

(c) clause 14 (Confidentiality and announcements);

(d) clause 17 (Whole agreement);

(e) clause 18 (Variation and waiver);

(f) clause 19 (Costs);

(g) clause 20 (Notice);

(h) clause 27 (Language); and

(i) clause 28 (Governing law and jurisdiction).

2.4 The Warrantors and the Buyer shall use all reasonable endeavours (so far as lies within their respective powers) to procure that the Conditions in paragraphs 2 to 4 of Schedule

2 are satisfied and the Warrantors shall ensure that the Condition in paragraph 1 of Schedule 2 is satisfied as soon as practicable and in any event no later than 6.00 pm:

(a) on 30 May 2006; or

(b) at such other time and date as may be agreed in writing by the Warrantors and the Buyer.

2.5 The Buyer and the Warrantors shall co-operate fully in all actions necessary to procure the satisfaction of the Conditions including, but not limited to, the provision by all parties of all information reasonably necessary to make any notification or filing that the Buyer deems to be necessary or as requested by any relevant authority, keeping all parties informed of the progress of any notification or filing and providing such assistance as may reasonably be required.

2.6 The Buyer may, to such extent as it thinks fit and is legally entitled to do so, waive any of the Conditions in Schedule 2 by written notice to the Seller.

3. SALE AND PURCHASE

3.1 On the terms of this agreement and subject to the Conditions, the Seller shall sell and the Buyer shall buy, with effect from Completion, the Sale Shares with full title guarantee free from all Encumbrances and together with all rights that attach (or may in the future attach) to them including, in particular, the right to receive all dividends and distributions declared, made or paid on or after the date of this agreement.

3.2 At Completion the Buyer will advance the sum of £500,000 to the Company to enable the Company to repay its loan obligation in such sum to Wittington Investments Limited and the Company will repay such sum to Wittington Investments Limited on Completion.

4. PURCHASE PRICE

4.1 Subject to clause 4.2 below, the consideration for the Issued Shares is £5,500,000 payable in cash at Completion to the Seller's Solicitors and shall be payable to the Seller in the amounts set out in column five of Schedule 1, Part 2.

4.2 The consideration to be paid under clauses 4.1 hereof shall be deemed to be reduced by the amount of any payment made to the Buyer:

(a) for a breach of any Warranty; or

(b) under the Tax Covenant.

5. COMPLETION

5.1 Completion shall take place on the Completion Date at 2pm:

(a) at the offices of the Buyer's Solicitors; or

(b) at any other place or time as agreed in writing by the Seller and the Buyer.

5.2 Completion Date means the first Business Day which is three Business Days after satisfaction or waiver of the Conditions, or if Completion is deferred in accordance with clause 5.7, the date to which it is deferred.

5.3 The Buyer shall use its best endeavours to give the Seller 7 days notice in writing of the expected Completion Date.

5.4 Each Seller undertakes to exercise the votes attaching to the Sale Shares held by it so as to procure to the extent that it is able that the Business shall be conducted in the manner provided in Part 3 of Schedule 3 (Completion) from the date of this agreement until Completion and the Warrantors give the Buyer the undertakings set out in that Schedule.

5.5 At Completion the Seller shall:

(a) deliver or cause to be delivered the documents and evidence set out in Part 2 of Schedule 3;

(b) procure that a board meeting of the Company is held at which the matters identified in Part 3 of Schedule 3 are carried out; and

(c) deliver any other documents referred to in this agreement as being required to be delivered by the Seller.

5.6 At Completion the Buyer shall:

(a) pay the consideration payable hereunder by telegraphic transfer to the Seller's Solicitors (who are irrevocably authorised to receive the same). Payment in accordance with this clause shall constitute a valid discharge of the Buyer's obligations under clause 4.1;

(b) deliver a certified copy of the resolution adopted by the board of directors of the Buyer authorising the Transaction, and the execution and delivery by the officers specified in such resolution of this agreement, and any other documents referred to in this agreement as being required to be delivered by it.

5.7 If the Seller does not comply with clause 5.5 in any material respect, the Buyer may, without prejudice to any other rights it has:

(a) proceed to Completion; or

(b) defer Completion to a date no more than 28 days after the date on which Completion would otherwise have taken place; or

(c) rescind this agreement.

5.8 The Buyer may defer Completion under clause 5.7 only once, but otherwise clause 5 applies to a Completion deferred under that clause as it applies to a Completion that has not been deferred.

5.9 As soon as possible after Completion the Seller shall send to the Buyer (at the Buyer's registered office for the time being) all records, correspondence, documents, files, memoranda and other papers relating to the Company not required to be delivered at Completion and which are not kept at any of the Properties.

5.10 The parties agree that at Completion the Company shall have no indebtedness other than trade creditors accruing through the ordinary activities of the Company, the loan of £500,000 repayable to Wittington Investments Limited, the monies due under the Lombard Finance Lease and the monies due under the BABW Loan.

6. INDEMNITY RELATING TO SHARE OPTIONS AND AM OPTIONS

6.1 The Warrantors shall indemnify the Buyer and the Company in respect of all losses, costs, liabilities, penalties and expenses (including without limitation reasonable legal and other professional fees) incurred by the Buyer or the Company which result from:

(a) the continued existence of the Share Options and the AM Options following the date of Completion; and/or

(b) the termination of the Share Options and the AM Options (whether defective or otherwise).

7. WARRANTIES

7.1 The Buyer is entering into this agreement on the basis of, and in reliance on, the Warranties.

7.2 The Warrantors warrant to the Buyer that each Warranty (other than the Warranties in paragraph 5 and 6 of Schedule 4) is true, accurate and not misleading on the date of this agreement except as Disclosed and the Warrantors, Boldswitch Limited, Wittington Investments Limited and the Individual Vendors severally warrant to the Buyer that paragraphs 5 and 6 of Schedule 4 are true, accurate and not misleading on the date of this agreement in relation to such shares of the Company as are being sold by them.

7.3 The Warranties are deemed to be repeated on each day up to and including the Completion Date and any reference made to the date of this agreement (whether express or implied) in relation to any Warranty shall be construed, in relation to any such repetition, as a reference to each such day.

7.4 The Seller and the Warrantors (in respect only of the warranties given by each of them respectively) shall ensure that the Company does not do or omit to do anything which would, at any time before or at Completion, be inconsistent with any of the Warranties, breach any Warranty or make any Warranty untrue or misleading.

7.5 Without prejudice to the right of the Buyer to claim on any other basis or take advantage of any other remedies available to it, if any Warranty is breached or proves to be untrue or misleading, the Warrantors (or Boldswitch Limited, Wittington Investments Limited or the Individuals Vendors in relation to paragraphs 5 and 6 of Schedule 4) shall pay to the Buyer on demand:

(a) the amount necessary to put the Company into the position it would have been in if the Warranty had not been breached or had not been untrue or misleading; and

(b) all costs and expenses (including, legal and other professional fees and costs) incurred by the Buyer or the Company as a result of such breach or of the Warranty being untrue or misleading.

A payment made in accordance with the provisions of this clause 7.5 shall include any amount necessary to ensure that, after any Taxation of the payment, the Buyer is left with the same amount it would have had if the payment was not subject to Taxation.

7.6 If at any time before or at Completion the Warrantors (or Boldswitch Limited, Wittington Investments Limited and the Individual Vendors in relation to paragraphs 5 and 6 of Schedule 4) become aware that a Warranty has been breached, is untrue or is misleading, or has a reasonable expectation that any of those things might occur, it shall immediately:

(a) notify the Buyer in sufficient detail to enable the Buyer to make an accurate assessment of the situation; and

(b) if requested by the Buyer, use its best endeavours to prevent or remedy the notified occurrence.

7.7 If at any time before or at Completion it becomes apparent that a Warranty has been breached, is untrue or misleading, or that the Seller has breached any other term of this agreement that in either case is material to the sale of the Sale Shares, the Buyer may (without prejudice to any other rights it may have in relation to the breach):

(a) rescind this agreement by notice to the Seller; or

(b) proceed to Completion.

7.8 Warranties qualified by the expression **so far as the Warrantors are aware** (or any similar expression) are deemed to be given to the best of the knowledge, information and belief of the Warrantors after they have made all reasonable and careful enquiries Provided That it is acknowledged that the Warrantors have not carried out any searches of the local authority in respect of the Properties.

7.9 Each of the Warranties is separate and, unless otherwise specifically provided, is not limited by reference to any other Warranty or any other provision in this agreement.

7.10 With the exception of the matters Disclosed, no information of which the Buyer and/or its agents and/or advisers has knowledge (actual, constructive or imputed) or which could have been discovered (whether by investigation made by the Buyer or made on its behalf) shall prejudice or prevent any Claim or reduce any amount recoverable thereunder.

7.11 In accordance with clause 7.10 above the Buyer confirms that it does not at the date hereof know of any fact, matter or circumstance that entitles it to make a Claim against the Company, or any claim under the Tax Covenant.

8. LIMITATIONS ON CLAIMS

8.1 The definitions and rules of interpretation in this clause apply in this agreement.

Claim: a claim for breach of any of the Warranties (excluding for the avoidance of doubt any claim under the Tax Covenant).

Substantiated Claim: a Claim in respect of which liability is admitted by the party against whom such Claim is brought, or which has been adjudicated on by a Court of

competent jurisdiction and no right of appeal lies in respect of such adjudication, or the parties are debarred by passage of time or otherwise from making an appeal.

A Claim is **connected** with another Claim or Substantiated Claim if they all arise out of the occurrence of the same event or relate to the same subject matter.

8.2 This clause limits the liability of the Seller in relation to any Claim and, where specified, any claim under the Tax Covenant.

8.3 The liability of the Seller for all Substantiated Claims and all claims under the Tax Covenant shall not exceed £3,300,000.

8.4 The Seller shall not be liable for a Claim unless:

(a) the amount of a Substantiated Claim, or of a series of connected Substantiated Claims of which that Substantiated Claim is one, exceeds £5,000;

(b) the amount of all Substantiated Claims that are not excluded under clause (a) when taken together, exceed £100,000, in which case the whole amount (and not just the amount by which the limit in this clause (b) is exceeded) is recoverable by the Buyer.

8.5 The Seller is not liable for a Claim or a claim under the Tax Covenant to the extent that the Claim or a claim under the Tax Covenant:

(a) relates to matters Disclosed; or

(b) relates to any matter specifically and fully provided for in the Accounts or the Management Accounts.

8.6 The Seller is not liable for a Claim or a claim under the Tax Covenant unless the Buyer has given the Seller notice in writing of the Claim or the claim under the Tax Covenant, summarising the nature of the Claim or claim under the Tax Covenant as far as it is known to the Buyer and the amount claimed:

(a) in the case of a claim made under the Tax Warranties or the Tax Covenant, within the period of seven years beginning with the Completion Date; and

(b) in any other case, within the period of 14 months beginning with the Completion Date,

and unless proceedings in respect of which shall have been commenced and served on the relevant Seller within six months of the date of such notice save in respect of a notified Claim or claim under the Tax Covenant where liability is contingent on an act or omission of a third party in which case such period shall only run from the date upon which the Claim or claim under the Tax Covenant ceases to be contingent.

8.7 Nothing in clause 8 applies to a Claim or a claim under the Tax Covenant that arises or is delayed as a result of dishonesty, fraud, wilful misconduct or wilful concealment by the Seller, its agents or advisers.

8.8 The Warrantors shall not plead the Limitation Act 1980 in respect of any claims made under the Tax Warranties or Tax Covenant up to seven years after the Completion Date.

8.9 Where the Buyer or the Company is entitled to recover from some other person or entity, including (but without limitation) under the terms of any insurance policy of the Company, any sum in respect of any matter or event giving rise to a Claim, the Buyer shall endeavour to recover that sum at the Warrantors' cost and, if any sum is so recovered, then either the amount payable by the Warrantors in respect of such Claim shall be reduced by an amount equal to the sum recovered or, if any amount shall already have been paid by the Warrantors in respect of such Claim, there shall be repaid to the Warrantors an amount equal to the sum recovered or, if less, the amount of such payment by the Warrantors.

8.10 If any Claim arises by reason of a liability of the Company which is a contingent liability when such Claim is notified to the Warrantors, then the Warrantors shall not be obliged to make any payment to the Buyer until such time as the contingent liability ceases to be contingent and becomes an actual liability.

8.11 If the same fact, matter, event or circumstance gives rise to more than one Claim, the Buyer shall not be entitled to recover more than once in respect of the same fact, matter, event or circumstance.

8.12 The Buyer shall not be entitled to recover any sum in respect of any Claim if and to the extent that it has already obtained reimbursement pursuant to a claim under the Tax Covenant or vice versa.

8.13 The Warrantors shall have no liability in respect of any Claim or under the Tax Covenant:

(a) to the extent that the Claim in question arises, or is increased, as a result of any increase in rates of Taxation or any change in the law or published practice and/or interpretation of a Taxation Authority made after the date of Completion with retrospective effect; or

(b) to the extent that the Claim in question arises, or is increased, as a result of any change in any accounting policy or practice of the Company made on or after Completion.

8.14 The amount of any Claim shall take into account the amount of any reduction in or relief from Taxation arising by virtue of the loss or damage in respect of which the Claim is made.

8.15 For the avoidance of doubt nothing in this clause 8 shall limit the Buyer's obligation to mitigate any losses or damages which it may suffer in consequence of any breach by the Warrantors of any of the Warranties or any fact, matter, event or circumstance giving rise to a Claim.

8.16 The Buyer acknowledges and agrees with the Warrantors that is has not entered into this agreement in reliance on any representations, warranties or undertakings of any kind other than the Warranties (as qualified by the Disclosure Letter) where the Buyer's only remedy (on an indemnity basis) shall be for breach of contract, and that, with the exception of representations made fraudulently, the Buyer will have no remedy against the Warrantors in respect of any representation made on or prior to the date of this agreement.

9. WARRANTY AND INDEMNITY INSURANCE

9.1 The parties acknowledge that the Buyer will have taken out insurance cover with New Hampshire Insurance Company by the Completion Date. It is acknowledged that the insurance premium will be £100,000 and the excess on the policy will be £100,000 ("Excess").

9.2 The Warrantors and the Buyer hereby agree that they shall not do any deliberate or intentional act to render such insurance policy void or voidable.

9.3 The Buyer agrees to pay the sum of £40,000 by way of contribution to the premium for such insurance cover which shall be payable on Completion. In the event of a claim under such insurance cover the Buyer will pay the Excess.

9.4 The Warrantors and the Buyer shall each provide the other copies of any information which they have supplied to the insurer for the purposes of obtaining the insurance cover prior to Completion.

10. TAX COVENANT

On Completion, the Warrantors and the Buyer shall enter into the Tax Covenant in Schedule 5.

11. RESTRICTIONS ON WARRANTORS AND WITTINGTON INVESTMENTS LIMITED

11.1 The Warrantors and Wittington Investments Limited, covenant severally with the Buyer that they shall not and Wittington Investments Limited shall procure that each of its Subsidiaries shall not:

(a) at any time during the period of 4 years for the Warrantors and 2 years for Wittington Investments Limited beginning with the Completion Date, in any geographic areas in which any business of the Company was carried on at the Completion Date, carry on or be employed, engaged or interested in any business which would be in competition with any part of the Business as the Business was carried on at the Completion Date; or

(b) at any time during the period of 2 years beginning with the Completion Date:

(i) offer employment to, enter into a contract for the services of or attempt to entice away from the Company, any individual who is at the time of the offer or attempt, and was at the Completion Date, employed or directly engaged in an executive or managerial position with the Company; or

(ii) procure or facilitate the making of any such offer or attempt by any other person; or

(c) at any time after Completion, use in the course of any business:

(i) any trade or service mark, business or domain name, design or logo which, at Completion, was or had been used by the Company; or

(ii) anything which is, in the reasonable opinion of the Buyer, capable of confusion with such words, mark, name, design or logo; or

(d) at any time during a period of 12 months beginning with the Completion Date, solicit or entice away from the Company any supplier to the Company who had supplied goods and/or services to the Company at any time during the 12 months immediately preceding the Completion Date, if that solicitation or enticement causes or would cause such supplier to cease supplying, or materially reduce its supply of those goods and/or services to the Company.

11.2 The covenants in this clause 11 are intended for the benefit of the Buyer and the Company and apply to actions carried out by the Warrantors and Wittington Investments Limited or any of its Subsidiaries in any capacity and whether directly or indirectly, on the Warrantors' and Wittington Investments Limited's or its Subsidiary's own behalf or on behalf of any other person or jointly with any other person.

11.3 Nothing in this clause 11 prevents the Warrantors and Wittington Investments Limited or any of its Subsidiaries from holding for investment purposes only:

(a) any units of any authorised unit trust; or

(b) not more than 3% of any class of shares or securities of any company traded on the London Stock Exchange or the New York Stock Exchange; or

(c) such shares in Faber France as they own at the date hereof.

11.4 Each of the covenants in this clause 11 is a separate undertaking and shall be enforceable by the Buyer separately and independently of its right to enforce any one or more of the other covenants contained in this clause 11. Each of the covenants in this clause 11 is considered fair and reasonable by the parties, but if any restriction is found to be unenforceable, but would be valid if any part of it were deleted or the period or area of application reduced, the restriction shall apply with such modifications as may be necessary to make it valid and enforceable.

11.5 The consideration for the undertakings contained in this clause 11 is included in the consideration payable under clause 4.1 of this agreement.

12. GUARANTEE

12.1 In consideration of the Seller entering into this agreement, the Guarantor unconditionally and irrevocably, as a continuing obligation, hereby guarantees to the Seller the proper and punctual observance and performance by the Buyer of all its obligations, commitments and undertakings under or pursuant to this agreement and agrees to indemnify the Seller against all loss, damages, costs and expenses which the Seller may suffer through or arising from a failure by the Buyer so to perform and observe any of its obligations, commitments and undertakings under or pursuant to this agreement provided that in respect of the guarantee and indemnity hereunder the Buyer's failure to observe or perform the obligations, commitments and undertakings under or pursuant to this agreement results from the Buyer's insolvency or liquidation. In the event of the Buyer's insolvency or liquidation, the Guarantor at its discretion shall have the right to step in to the position of the Buyer and perform the Buyer's obligations and receive the benefit of the Buyer's rights under this agreement.

12.2 If a the Buyer fails as a result of the Buyer's insolvency or liquidation to perform or observe any of the obligations, commitments or undertakings referred to in this agreement, the Guarantor shall forthwith upon demand unconditionally perform (or procure the performance or observance of) and satisfy (or procure the satisfaction of) the obligation, commitment or undertaking in regard to which this failure has occurred in the manner prescribed in this agreement and so that the same benefits shall be received by, or conferred on, the Seller as they would have had if such obligation, commitment or undertaking had been duly performed, observed and satisfied by the Buyer.

12.3 The Guarantor's liability under this clause 12 shall remain in force until all of the Buyer's obligations, commitments and undertakings under or pursuant to this agreement have been fully performed and discharged and all sums payable by the Buyer under this agreement have been fully paid. Nothing shall impair or discharge the Guarantor's liability or obligations under this clause 12 and this shall apply, without limitation, in relation to:

(a) the existence, validity, taking or renewal of any other guarantee, security, right of recourse, set off or combination or other right or interest held by the Seller in relation to this agreement or any demand or enforcement of, neglect to perfect, failure to demand or enforce or the release or waiver of any such guarantee, security, right of recourse, set off or combination or other right or interest; or

(b) any amendment to or variation (howsoever substantial or material) of this agreement or any security or other document relating to this agreement or any assignment of this agreement or any waiver or departure from its terms or any such security or document; or

(c) any release of, or granting of time or any other indulgence to, the Buyer or any other person; or

(d) any winding up, dissolution, reconstruction, arrangement or reorganisation, legal limitation, disability, incapacity or lack of corporate power or authority or other circumstances of, or any change in the constitution or corporate identity (including amalgamation) or loss of corporate identity by, the Buyer, the Seller, the Guarantor or any other person (or any act taken by the Buyer, the Seller, the Guarantor or any other person in relation to any such event); or

(e) any other circumstances which might render void or unenforceable the obligations, commitments and undertakings of the Buyer under this agreement or which might affect the Sellers' ability to recover amounts from the Buyer.

12.4 Demands may be made by the Seller under this clause 12 from time to time. The obligations of the Guarantor under this clause 12 are continuing obligations and shall extend to all of the obligations from time to time of the Buyer, regardless of any intermediate payment or discharge in whole or in part, and are in addition to and not in substitution for any other security which the Seller may now or in the future hold for the obligations of the Buyer under this agreement and may be enforced by the Seller without the Seller first having recourse to any such other security or taking any steps or proceedings against the Buyer.

12.5 Any release, compromise or discharge of the obligations of the Guarantor shall be deemed to be made subject to the condition that it will be void if any payment,

performance or security which may be or has been received by the Seller is set aside, refunded or reduced or proves invalid for whatever reason. If such condition is satisfied, the Seller shall be entitled to recover from the Guarantor on demand the value of such security or the amount of such payment as if such discharge, release, composition or arrangement had not been effected.

12.6 Any amounts payable under this clause 12 shall be paid in full without any deduction or withholding whatsoever (whether in respect of set-off, counterclaim, duties, charges, taxes or otherwise) unless such deduction or withholding is required by law, in which event the Guarantor shall pay to the Seller an additional amount so that the net amount received by the Seller will equal the full amount which the Seller would have received had no such deduction or withholding been made.

13. TERMINATION OF THE SHAREHOLDERS AGREEMENT

13.1 The Sellers hereby agree to terminate the Shareholders Agreement with effect from the Completion Date.

14. CONFIDENTIALITY AND ANNOUNCEMENTS

14.1 The Seller undertakes to the Buyer to keep confidential the terms of this agreement and all information which it has acquired about the Company and the Buyer's Group (as such Group is constituted immediately before Completion) and to use the information only for the purposes contemplated by this agreement.

14.2 The Buyer undertakes to the Seller to keep confidential the terms of this agreement and all information that it has acquired about the Seller or its Groups (as such Groups are constituted immediately after Completion) and to use the information only for the purposes contemplated by this agreement.

14.3 The Buyer does not have to keep confidential or restrict its use of information about the Company after Completion.

14.4 A party does not have to keep confidential or to restrict its use of:

(a) information that is or becomes public knowledge other than as a direct or indirect result of a breach of this agreement; or

(b) information that it receives from a source not connected with the party to whom the duty of confidence is owed that it acquires free from any obligation of confidence to any other person.

14.5 Any party may disclose any information that it is otherwise required to keep confidential under this clause 14:

(a) to such professional advisers, consultants and employees or officers of its Group as are reasonably necessary to advise on this agreement, or to facilitate the Transaction, if the disclosing party procures that the people to whom the information is disclosed keep it confidential as if they were that party; or

(b) with the written consent of all the other parties; or

(c) to confirm that the sale has taken place and the date of the sale (but without otherwise revealing any other items of sale or making any other announcement); or

(d) to the extent that the disclosure is required:

(i) by law; or

(ii) by a regulatory body, Taxation Authority or securities exchange; or

(iii) to make any filing with, or obtain any authorisation from, a regulatory body, Taxation Authority or securities exchange; or

(iv) under any arrangements in place under which negotiations relating to terms and conditions of employment are conducted; or

(v) to protect the disclosing party's interest in any legal proceedings,

but shall use reasonable endeavours to consult the other parties and to take into account any reasonable requests they may have in relation to the disclosure before making it.

14.6 Each party shall supply any other party with any information about itself, its Group or this agreement as such other party may reasonably require for the purposes of satisfying the requirements of a law, regulatory body or securities exchange to which such other party is subject.

15. FURTHER ASSURANCE

The Seller shall (at its expense) promptly execute and deliver all such documents, and do all such things, as the Buyer may from time to time require for the purpose of giving full effect to the provisions of this agreement.

16. ASSIGNMENT

16.1 Except as provided otherwise in this agreement, no party may assign, or grant any Encumbrance or security interest over, any of its rights under this agreement or any document referred to in it.

16.2 Each party that has rights under this agreement is acting on its own behalf.

16.3 The Buyer may assign its rights under this agreement (or any document referred to in this agreement) but not its obligations to a member of its Group or to any person to whom it transfers the Sale Shares.

16.4 If there is an assignment:

(a) the Seller may discharge its obligations under this agreement to the assignor until it receives notice of the assignment; and

(b) the assignee may enforce this agreement as if it were a party to it, but the Buyer shall remain liable for any obligations under this agreement.

17. WHOLE AGREEMENT

17.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any arrangements, understanding or previous agreement between them relating to the subject matter they cover.

17.2 Nothing in this clause 17 operates to limit or exclude any liability for fraud.

18. VARIATION AND WAIVER

18.1 Any variation of this agreement shall be in writing and signed by or on behalf of each party.

18.2 Any waiver of any right under this agreement is only effective if it is in writing and signed by the waiving or consenting party and it applies only in the circumstances for which it is given and shall not prevent the party who has given the waiver from subsequently relying on the provision it has waived.

18.3 No failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.

18.4 No single or partial exercise of any right or remedy under this agreement shall preclude or restrict the further exercise of any such right or remedy.

18.5 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

19. COSTS

All costs in connection with the negotiation, preparation, execution and performance of this agreement, and any documents referred to in it, shall be borne by the party that incurred the costs.

20. NOTICE

20.1 A notice given under this agreement:

(a) shall be in writing in the English language (or be accompanied by a properly prepared translation into English);

(b) shall be sent for the attention of the person, and to the address or fax number, specified in this clause 20 (or such other address, fax number or person as each party may notify to the others in accordance with the provisions of this clause 20); and

(c) shall be:

(i) delivered personally; or

(ii) sent by fax; or

(iii) sent by pre-paid first-class post or recorded delivery; or

(iv) (if the notice is to be served by post outside the country from which it is sent) sent by airmail.

20.2 The addresses for service of notice are:

(a) Steven Bedford (as Seller representative)
Audley Mead
20 Bolton Avenue
Windsor SL4 3JF

cc. Rosenblatt
9-13 St Andrew Street
London EC4A 3AF

Tel: 020 7955 0880
Fax: 020 7955 0888

(b) Build-A-Bear UK Holdings Limited
St Stephens House
Arthur Road
Windsor
Berkshire SL4 1RU

cc. Bryan Cave
33 Cannon Street
London EC4M 5TE

Tel: 020 7246 5800
Fax: 020 7246 5858

20.3 A notice is deemed to have been received:

(a) if delivered personally, at the time of delivery; or

(b) in the case of fax, at the time of transmission; or

(c) in the case of pre-paid first class post or recorded delivery, 1 Business Day from the date of posting; or

(d) in the case of airmail, 5 Business Days from the date of posting; or

(e) if deemed receipt under the previous paragraphs of this clause 20.3 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of receipt.

20.4 To prove service, it is sufficient to prove that the notice was transmitted by fax to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

21. INTEREST ON LATE PAYMENT

21.1 Where a sum is required to be paid under this agreement (other than under the Tax Covenant) but is not paid before or on the date the parties agreed, the party due to pay the sum shall also pay an amount equal to interest on that sum for the period beginning with that date and ending with the date the sum is paid (and the period shall continue after as well as before judgment).

21.2 The rate of interest shall be 2% per annum above the base lending rate for the time being of HSBC. Interest shall accrue on a daily basis and be compounded quarterly.

21.3 This clause 21 is without prejudice to any claim for interest under the law.

22. SEVERANCE

22.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

22.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

23. AGREEMENT SURVIVES COMPLETION

This agreement (other than obligations that have already been fully performed) remains in full force after Completion.

24. THIRD PARTY RIGHTS

24.1 Subject to clause 24.2, this agreement and the documents referred to in it are made for the benefit of the parties and their successors and permitted assigns and are not intended to benefit, or be enforceable by, anyone else.

24.2 The following provisions are intended to benefit future buyers of the Sale Shares from the Buyer and, where they are identified in the relevant clauses, the Company, and shall be enforceable by them to the fullest extent permitted by law:

(a) clause 7 (Warranties) and Schedule 4 (Warranties), subject to clause 8 (Limitations on claims);

(b) clause 9 (Tax covenant) and Schedule 5 (Tax covenant);

(c) clause 11 (Restrictions on the Warrantors and Wittington Investments Limited);

(d) clause 14 (Confidentiality and announcements); and

(e) clause 21 (Interest on late payment).

24.3 Each party represents to the other that their respective rights to terminate, rescind or agree any amendment, variation, waiver or settlement under this agreement are not subject to the consent of any person that is not a party to this agreement.

25. SUCCESSORS

The rights and obligations of the Seller and the Buyer under this agreement shall continue for the benefit of, and shall be binding on, their respective successors and assigns.

26. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

27. LANGUAGE

If this agreement is translated into any language other than English, the English language text shall prevail.

28. GOVERNING LAW AND JURISDICTION

28.1 This agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.

28.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement.

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1

PARTICULARS OF THE COMPANY AND SUBSIDIARIES

Part 1. The Company

Name:	Amsbra Limited
Registration number:	4537212
Registered office:	St Stephen's House Arthur Road Windsor Berkshire SL4 1RU
Authorised share capital Amount: Divided into:	10,000 10,000 of £1 each
ISSUED SHARE CAPITAL Amount: Divided into:	£ 39,894.56 2,737,149 Ordinary A Shares and 1,252,307 Ordinary B Shares
Registered shareholders (and number of Sale Shares held):	(See part 2 below)
Beneficial owner of Sale Shares (if different) and number of Sale Shares beneficially owned:	As above
Directors and shadow directors:	Rupert Ashe, Nigel French, Andrew Hugh Mackay, Steven Bedford
Secretary:	Rupert Ashe
Auditors	CLB Littlejohn Frazer
Registered Charges	2

Part 2 The Shareholders

		Voting A Shares	Non-Voting B Shares	Total issued share capital	Total Nominal value £	Consideration received £
1.	Wittington Investments Limited Weston Centre 10 Grosvenor Street London WK 4QY	925981	492909	1418890	14189	1956125
2.	NSS Trustees Limited & Simon Bentley on behalf of Regent's Park Estates Pension Scheme c/o Simon Bentley Mishcon de Reya Summit House 12 Red Lion Sq. London WCIR 4QD	37068	28194	65262	653	89973
3.	Malcolm Dalgleish Esq. Dalgleish & Co. 80 Bond Street London W1S 1DD	113641	76130	189771	1898	261625
4.	Global Partners Limited (Nigel French) Century House 16 Par La Vile Road Hamilton, HM HX, Bermuda	103123	70600	173723	1737	239501
5.	Justin Kendrick Esq. 4 Binjai Hill Singapore	22308	17500	39808	398	54882
6.	Christopher John Newlands Sykes Esq. Kingswood Farm East Park Lane Newchapel Lingfield Surrey RH7 6HS	26500	17500	44000	440	60661

		Voting A Shares	Non-Voting B Shares	Total issued share capital	Total Nominal value £	Consideration received £
7.	Aero Systems SA (Michael Mitchell) 10 Chemin des Chasseurs, 1380 Ohain Belgium	37068	28194	65262	1160	89971
8.	Michael Mitchell [10 Chemin des Chasseurs 1380 Ohain Belgium]	0	50724	50724		69929
9.	Merville Limited c/o Seamus McLaughlin, Martin & Company, 25 St Thomas Street, Winchester S023 9DD	44616	35000	79616	796	109762
10.	Mrs Sue Buchan 53 Great King Street Edinburgh EH3 6RP	41558	54500	96058	961	132429
11.	Boldswitch Limited (British Land) 10 Cornwall Terrace London NW1 4QP	236116	160875	396991	3970	547305
12.	Steven Bedford Esq. Audley Mead 20 Bolton Avenue Windsor SL4 3JF	310000	0	310000	3100	427375
13.	The Granola Trust (Andrew Mackay) Trust Corporation of the Channel Islands Limited, PO Box 665, Rosenheath, The Grange, St Peter Port, Guernsey, GY1 3SJ	470000	0	470000	4700	647957

		Voting A Shares	Non-Voting B Shares	Total issued share capital	Total Nominal value £	Consideration received £
14.	Rupert Ashe Esq. Wall House No. 1 The Green Wimbledon SW19 5AZ	155000	5000	160000	1600	220581
15.	Angus Samuels 126 Jermyn St SW1Y 4UJ	28850	10413	39263	393	54130
16.	John Howard-Smith 126 Jermyn St SW1Y 4UJ	11540	4165	15705	157	21652
17.	Kenneth McKelvey 126 Jermyn St SW1Y 4UJ	57700	95825	153525	1535	211655
18.	Jonathan Punter 126 Jermyn St SW1Y 4UJ	31425	5206	36631	366	50502
19.	David Cule Lords Hill House Lords Hill Common Shamley Green Guildford GU5 0UZ	28850	46642	75492	755	104077
20.	Gary Jackson 152 Grosvenor Road SW1V 3JL	14425	14425	28850	289	39774

		Voting A Shares	Non-Voting B Shares	Total issued share capital	Total Nominal value £	Consideration received £
21.	Paul Rosenblatt Rosenblatt UK 603 Beetham Plaza The Strand Liverpool LS OXJ	22308	17500	39808	398	54882
22.	Philip Lewis Hines UK Queensberry House 3 Old Burlington St, W1S 3AE	19072	21005	40077	401	55252
	TOTAL SHARES	**2737149**	**1252307**	**3989456**	**19421**	**5500000**

Schedule 2

CONDITIONS

1. The termination of the Share Options and of the AM Options.
2. The completion of the purchase by the Buyer or a member of the Buyer's Group of the entire issued share capital of The Bear Factory Ltd from Hamleys.
3. The issue of an insurance policy by New Hampshire Insurance Company in terms reasonably satisfactory to the Purchaser and the Warrantors for the purpose of providing insurance cover in the event of a breach of warranty or a claim under the Tax Covenant.

Schedule 3

COMPLETION

Part 1. Conduct between exchange and completion

1. The Warrantors undertake to procure and procures that each member of their Group(s) undertake to procure that the Business shall be conducted in the manner provided in this Part 3 of Schedule 3 from the date of this agreement to Completion.

2. The Company shall carry on business in the normal course.

3. The Company shall not:

   (a) dispose of any material assets used or required for the operation of its business; or

   (b) allot or agree to allot any shares or other securities, repurchase, redeem or agree to repurchase or redeem any of the shares; or

   (c) pass any resolution; or

   (d) enter into, modify or agree to terminate any Material Contract (as defined in Part 1 of Schedule 4); or

   (e) incur any capital expenditure on any individual item in excess of £20,000; or

   (f) borrow any sum in excess of £20,000; or

   (g) enter into any lease, lease hire or hire purchase agreement or agreement for payment on deferred terms; or

   (h) pay any dividend or make any other distribution of its assets; or

   (i) make, or agree to make, material alterations to the terms and conditions of employment (including benefits) of any of its directors, officers or employees; or

   (j) provide or agree to provide any non-contract benefit to any director, officer, employee or their dependants; or

   (k) dismiss any of its employees or employ or engage (or offer to employ or engage) any person; or

   (l) create any Encumbrance over any of its assets or its undertaking; or

   (m) institute, settle or agree to settle any legal proceedings relating to its business, except debt collection in the normal course of business; or

   (n) pay any management charge to the Seller; or

   (o) incur any liability to the Seller, other than trading liabilities incurred in the normal course of business; or

(p) vary the terms on which it holds any of the Properties or settle any rent review; or

(q) (make any material change to the accounting procedures or principles by reference to which its accounts are drawn up.

4. The Company may do anything falling within paragraph 3 of this Schedule 3 if the Buyer has given prior written consent.

5. The Company shall maintain in force insurance policies:

(a) that have limits of indemnity at least equal to; and

(b) the other terms of which are no less favourable than,

those policies of insurance maintained by the Company on the date of this agreement.

6. The Warrantors shall use its best endeavours to maintain the trade and trade connections of the Company in the ordinary course of business.

7. The Warrantors shall give to the Buyer as soon as possible full details of any material change in the business, financial position or assets of the Company.

8. The Warrantors shall not:

(a) induce, or attempt to induce, any of the employees of the Company, whether directly or indirectly, to terminate their employment before the Completion Date; or

(b) incur any liabilities to the Company, other than trading liabilities incurred in the normal course of business.

9. No amendment, other than one made solely to comply with legislative requirements, shall be made to any agreements or arrangements for the payment of pensions or other benefits on retirement:

(a) to present or former directors, officers or employees of the Company; or

(b) to the dependants of any of those people.

10. The Warrantors shall, at the Buyer's request and expense, provide the Buyer with such information or documents as it may reasonably require relating to the terms of employment or any other matter concerning any Employee or Worker or any body of employees or their representatives in the period prior to the Completion Date.

11. The Warrantors shall, at the Buyer's expense and subject to its obligations under the Data Protection Act 1998, give such assistance as the Buyer may reasonably require to contest any claim by anyone employed or engaged by the Company prior to the Completion Date or their representatives resulting from or in connection with this agreement.

Part 2. What the Seller shall deliver to the Buyer at Completion

1. At Completion, the Seller shall deliver or cause to be delivered to the Buyer the following documents and evidence:

(a) transfers of the Sale Shares executed by the registered holder in favour of the Buyer;

(b) the share certificates for the Sale Shares in the name of the registered holder or an indemnity in the agreed form for any lost certificates;

(c) the waivers, consents and other documents required to enable the Buyer to be registered as the holder of the Sale Shares;

(d) irrevocable powers of attorney in agreed form given by the Seller in favour of the Buyer to enable the beneficiary (or its proxies) to exercise all voting and other rights attaching to the Sale Shares before the transfer of all such shares is registered in the register of members;

(e) the original of any power of attorney under which any document to be delivered to the Buyer under this paragraph 1 has been executed;

(f) in relation to the Company, the statutory registers and minute books (written up to the time of Completion), the common seal, certificate of incorporation and any certificates of incorporation on change of name;

(g) the written resignation, executed as a deed and in the agreed form, of the directors and secretary of the Company from their offices and employment with the Company;

(h) the written resignation of the auditors of the Company accompanied in each case by:

(i) a statement that there are no circumstances connected with the auditors' resignation which should be brought to the notice of the members or creditors of the Company; and

(ii) a written assurance that the resignation and statement have been, or will be, deposited at the registered office of the Company in accordance with section 394 of the Companies Act 1985;

(i) signed copies of special resolutions of the Company in a form appropriate for filing at Companies House to adopt new articles of association of the Company in the form the Buyer requires;

(j) a copy of the new articles of association of the Company appropriate for filing at Companies House;

(k) a certified copy of the minutes of the board meetings held pursuant to Part 3 of this Schedule 3;

(l) in relation to the Company:

(i) statements from each bank at which the Company has an account, giving the balance of each account at the close of business on the last Business Day before Completion;

(ii) all cheque books in current use and written confirmation that no cheques have been written since those statements were prepared;

(iii) details of their cash book balances; and

(iv) reconciliation statements reconciling the cash book balances and the cheque books with the bank statements delivered;

(v) all title deeds and other documents relating to the Properties;

(vi) evidence, in agreed form, that any indebtedness or other liability of the kind described in paragraph 41 of Part 1 of Schedule 4 (Transactions with the seller) has been discharged;

(vii) evidence, in agreed form, that the Company has been discharged from any responsibility for the indebtedness, or for the default in the performance of any obligation, of any other person;

(viii) all charges, mortgages, debentures and guarantees to which the Company is a party and, in relation to each such instrument and any covenants connected with it:

(1) a sealed discharge or release in the agreed form; and

(2) a sworn and completed Form 403a (declaration that part of the property or undertaking charged has been released from the charge);

(3) certified copy of the resolution adopted by the board of directors of the Seller (as applicable) authorising and approving the Transaction.

Part 3. Matters for the board meetings at Completion

2. The Seller shall cause a board meeting of the Company to be held at Completion at which the matters set out in this Part 3 of this Schedule 3 shall take place.

3. A resolution to register the transfer of the Sale Shares shall be passed at such board meeting of the Company, subject to the transfer(s) being stamped at the cost of the Buyer.

4. All directors, secretaries and auditors of the Company shall resign from their offices and employment with the Company with effect from the end of the relevant board meeting.

5. Such letters as may be required varying the terms of the service agreements of Rupert Ashe, Steven Bedford and Andrew Mackay shall be entered into by the Company and the above individuals.

6. The persons the Buyer nominates shall be appointed as directors and secretary of the Company (but not exceeding any maximum number of directors contained in the Company's articles of association). The appointments shall take effect at the end of the board meeting.

7. KPMG shall be appointed as the auditors of the Company with effect from the end of the relevant board meeting.

8. All the existing instructions and authorities to bankers shall be revoked and replaced with new instructions and authorities to those banks in the form the Buyer requires.

9. The address of the registered office of the Company shall be changed to the address required by the Buyer.

10. The accounting reference date of the Company shall be changed to the date required by the Buyer.

Schedule 4

WARRANTIES

Part 1. General warranties

POWER TO SELL THE COMPANY

1. Each Seller has taken all necessary action and has all requisite power and authority to enter into and perform this agreement in accordance with its terms and the other documents referred to in it.

2. This agreement and the other documents referred to in it constitute (or shall constitute when executed) valid, legal and binding obligations on each Seller in the terms of the agreement and such other documents.

3. Compliance with the terms of this agreement and the documents referred to in it shall not breach or constitute a default under any of the following:

   (a) any agreement or instrument to which any Seller is a party or by which it is bound; or

   (b) any order, judgment, decree or other restriction applicable to any Seller.

SHARES IN THE COMPANY AND SUBSIDIARIES

4. The Sale Shares constitute the whole of the allotted and issued share capital of the Company and are fully paid.

5. Each Seller is the sole legal and beneficial owner of the number of Sale Shares set against his name in Schedule 1.

6. The Sale Shares are free from all Encumbrances.

7. No right has been granted or commitment given to create a right to any person to require the Company to issue any share capital and no Encumbrance has been created or commitment given to create any Encumbrance in favour of any person affecting any unissued shares or debentures or other unissued securities of the Company and no person has claimed any rights in connection with any of those things.

8. The Company does not:

   (a) does not hold or beneficially owns, nor has agreed to acquire, any securities of any corporation; or

   (b) is not nor has agreed to become a member of any partnership or other unincorporated association, joint venture or consortium (other than recognised trade associations); or

   (c) does not have, outside its country of incorporation, any branch or permanent establishment; or

   (d) has not allotted or issued any securities that are convertible into shares.

9. The Company has not at any time:

(a) purchased, redeemed or repaid any of its own share capital; or

(b) given any financial assistance in connection with any acquisition of its share capital as it would fall within sections 151 to 158 (inclusive) of the Companies Acts.

10. All dividends or distributions declared, made or paid by the Company have been declared, made or paid in accordance with its memorandum, articles of association, the applicable provisions of the Companies Acts and any agreements or arrangements made with any third party regulating the payment of dividends and distributions.

CONSTITUTIONAL AND CORPORATE DOCUMENTS

11. The copies of the memorandum and articles of association or other constitutional and corporate documents of the Company Disclosed to the Buyer or its advisers are true, accurate and complete in all respects and copies of all the resolutions and agreements required to be annexed to or incorporated in those documents by the law applicable are annexed or incorporated.

12. All statutory books and registers of the Company have been properly kept and no notice or allegation that any of them is incorrect or should be rectified has been received.

13. All returns, particulars, resolutions and other documents which the Company is required by law to file with or deliver to any authority in any jurisdiction (including, in particular, the Registrar of Companies in England and Wales) have been correctly made up and filed or, as the case may be, delivered.

INFORMATION

14. The particulars relating to the Company in this agreement are accurate and not misleading.

COMPLIANCE WITH LAWS

15. The Company has at all times conducted its business in accordance with all applicable laws and regulations.

LICENCES AND CONSENTS

16. The Company has all necessary licences, consents, permits and authorities necessary to carry on its business in the places and in the manner in which its business is now carried on, all of which are valid and subsisting.

17. So far as the Warrantors are aware, there is no reason why any of those licences, consents, permits and authorities should be suspended, cancelled, revoked or not renewed on the same terms.

INSURANCE

18. The insurance policies maintained by or on behalf of the Company provide full indemnity cover against all losses and liabilities including business interruption and other

risks that are normally insured against by a person carrying on the same type of business as the Company.

19. The brief particulars of those policies as set out in the Disclosure Letter are accurate and not misleading.

20. There are no material outstanding claims under, or in respect of the validity of any of those policies and, so far as the Warrantors are aware, there are no circumstances likely to give rise to any claim under any of those policies.

21. All the insurance policies are in full force and effect, are not void or voidable, nothing has been done or not done by the Company, or so far as the Warrantors are aware, by any third party which would make any of them void or voidable and Completion will not terminate, or entitle any insurer to terminate, any such policy.

POWER OF ATTORNEY

22. There are no powers of attorney in force given by the Company.

23. No person, as agent or otherwise, is entitled or authorised to bind or commit the Company to any obligation not in the ordinary course of the Company business.

24. The Disclosure Letter sets out details of all persons who have authority to bind the Company in the ordinary course of business.

DISPUTES AND INVESTIGATIONS

25. The Company nor, so far as the Warrantors are aware, any person for whom the Company is vicariously liable:

(a) is engaged in any litigation, administrative, mediation or arbitration proceedings or other proceedings or hearings before any statutory or governmental body, department, board or agency (except for debt collection in the normal course of business); or

(b) is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body.

26. No director of the Company is, to the extent that it relates to the business of the Company, engaged in or subject to any of the matters mentioned in paragraph 25 of this Schedule 4.

27. No such proceedings, investigation or inquiry as are mentioned in paragraph 25 or paragraph 26 of this Schedule 4 have been threatened or are pending and, so far as the Warrantors are aware, there are no circumstances likely to give rise to any such proceedings.

28. The Company is not affected by any existing or pending judgments or rulings and has not given any undertakings arising from legal proceedings to a court, governmental agency, regulator or third party.

DEFECTIVE PRODUCTS

29. The Company has not sold any products which were, at the time they were sold, faulty or defective or did not comply with:

    (a) warranties or representations expressly made or implied by or on behalf of the Company; or

    (b) all laws, regulations, standards and requirements applicable to the products.

30. No proceedings have been started, are pending or have been threatened against the Company in which it is claimed that any products sold by the Company are defective, not appropriate for their intended use or have caused bodily injury or material damage to any person or property when applied or used as intended.

31. No proceedings have been started and there are no outstanding liabilities or claims pending or threatened against the Company in respect of the provision of in store customer service for which the Company is or may become liable and no dispute exists between the Company and any of its customers or clients.

CUSTOMERS AND SUPPLIERS

32. In the 12 months ending with the date of this agreement, the business of the Company has not been materially affected in an adverse manner as a result of any one or more of the following things happening to the Company:

    (a) the loss of any of its customers or suppliers; or

    (b) a reduction in trade with its customers or in the extent to which it is supplied by any of its suppliers; or

    (c) a change in the terms on which it trades with or is supplied by any of its customers or suppliers.

COMPETITION

The definition in this paragraph applies in this agreement.

Competition Law: the national and directly effective legislation of any jurisdiction which governs the conduct of companies or individuals in relation to restrictive or other anti-competitive agreements or practices (including, but not limited to, cartels, pricing, resale pricing, market sharing, bid rigging, terms of trading, purchase or supply and joint ventures), dominant or monopoly market positions (whether held individually or collectively) and the control of acquisitions or mergers.

33. The Company is not engaged in any agreement, arrangement, practice or conduct which amounts to an infringement of the Competition Law of any jurisdiction in which the Company conducts business and no Director is engaged in any activity which would be an offence or infringement under any such Competition Law.

34. The Company is not the subject of any investigation, inquiry or proceedings by any relevant government body, agency or authority in connection with any actual or alleged

infringement of the Competition Law of any jurisdiction in which the Company conducts business.

35. No such investigation, inquiry or proceedings as mentioned in paragraph 34 of this Schedule 4 have been threatened or are pending and, so far as the Warrantors are aware, there are no circumstances likely to give rise to any such investigation, inquiry or proceedings.

36. The Company is not affected by any existing or pending decisions, judgments, orders or rulings of any relevant government body, agency or authority responsible for enforcing the Competition Law of any jurisdiction in which the Company conducts business and the Company has not given any undertakings or commitments to such bodies which affect the conduct of the Business.

37. The Company is not in receipt of any payment, guarantee, financial assistance or other aid from the government or any state body which was not, but should have been, notified to the European Commission under Article 88 of the EC Treaty for decision declaring such aid to be compatible with the common market.

CONTRACTS

The definition in this paragraph applies in this agreement.

Material Contract: an agreement or arrangement to which the Company is a party or is bound by and which is of material importance to the business, profits or assets of the Company.

38. Except for the agreements and arrangements Disclosed, the Company is not a party to or subject to any agreement or arrangement which:

(a) is a Material Contract; or

(b) is of an unusual or exceptional nature; or

(c) is not in the ordinary and usual course of business of the Company; or

(d) may be terminated as a result of any Change of Control of the Company; or

(e) restricts the freedom of the Company to carry on the whole or any part of its business in any part of the world in such manner as it thinks fit; or

(f) involves agency or distributorship; or

(g) involves partnership, joint venture, consortium, joint development, shareholders or similar arrangements; or

(h) is incapable of complete performance in accordance with its terms within six months after the date on which it was entered into; or

(i) cannot be readily fulfilled or performed by the Company on time and without undue or unusual expenditure of money and effort; or

(j) involves or is likely to involve an aggregate consideration payable by or to the Company in excess of £50,000; or

(k) requires the Company to pay any commission, finders' fee, royalty or the like; or

(l) is for the supply of goods and/or services by or to the Company on terms under which retrospective or future discounts, price reductions or other financial incentives are given; or

(m) is not on arm's length terms; or

(n) provides for payments or other dealings in or calculated by reference to the euro.

39. Each Material Contract is in full force and effect and binding on the parties to it. The Company has not defaulted under or breached a Material Contract and:

(a) so far as the Warrantors are aware, no other party to a Material Contract has defaulted under or breached such a contract; and

(b) no such default or breach by the Company or any other party has been threatened or, so far as the Warrantors are aware, is likely.

40. No notice of termination of a Material Contract has been received or served by the Company and, so far as the Warrantors are aware, there are no grounds for determination, rescission, avoidance, repudiation or a material change in the terms of any such contract.

TRANSACTIONS WITH THE SELLER

41. There is no outstanding indebtedness or other liability (actual or contingent) and no outstanding contract, commitment or arrangement between the Company and any of the following:

(a) any Seller or any member of a Seller's Group (where a Seller is a company) or person Connected with any Seller; or

(b) any director of a member of a Seller's Group (where a Seller is a company) or any person Connected with such a member or director.

42. No Seller, nor any person Connected with any Seller, is entitled to a claim of any nature against the Company or has assigned to any person the benefit of a claim against the Company to which any Seller or a person Connected with any Seller would otherwise be entitled.

FINANCE AND GUARANTEES

43. Full particulars of all money borrowed by the Company (including full particulars of the terms on which such money has been borrowed) have been Disclosed.

44. No guarantee, mortgage, charge, pledge, lien, assignment or other security agreement or arrangement has been given by or entered into by the Company or any third party in respect of borrowings or other obligations of the Company.

45. The total amount borrowed by the Company does not exceed any limitations on the borrowing powers contained:

(a) in the memorandum and articles of association of the Company; or

(b) in any debenture or other deed or document binding on the Company.

46. The Company does not have any outstanding loan capital, or has lent any money that has not been repaid, and there are no debts owing to the Company other than debts that have arisen in the normal course of business.

47. The Company has not:

(a) factored any of its debts or discounted any of its debts or engaged in financing of a type which would not need to be shown or reflected in the Accounts; or

(b) waived any right of set-off it may have against any third party.

48. All debts (less any provision for bad and doubtful debts) owing to the Company reflected in the Accounts and all debts subsequently recorded in the books of the Company have either prior to the date of this agreement been realised or will, within three months after the date of this agreement, realise in cash their full amount as included in those Accounts or books and none of those debts nor any part of them has been outstanding for more than two months from its due date for payment.

49. No indebtedness of the Company is due and payable and no security over any of the assets of the Company is now enforceable, whether by virtue of the stated maturity date of the indebtedness having been reached or otherwise. The Company has not received any notice whose terms have not been fully complied with and/or carried out from any creditor requiring any payment to be made and/or intimating the enforcement of any security which it may hold over the assets of the Company.

50. The Company is not responsible for the indebtedness, or for the default in the performance of any obligation, of any other person.

51. The Company is not subject to any arrangement for receipt or repayment of any grant, subsidy or financial assistance from any government department or other body.

52. Particulars of the balances of all the bank accounts of the Company, showing the position as at the Business Day immediately preceding the date of this agreement, have been Disclosed and the Company has no other bank accounts. Since those particulars were given, there have been no payments out of those accounts other than routine payments in the ordinary course of business.

53. A Change of Control of the Company will not result in:

(a) termination of or material effect on any financial agreement or arrangement to which the Company is a party or subject; or

(b) any indebtedness of the Company becoming due, or capable of being declared due and payable, prior to its stated maturity.

INSOLVENCY

54. The Company:

(a) is not insolvent or unable to pay its debts within the meaning of the Insolvency Act 1986 or any other insolvency legislation applicable to it; and

(b) has not stopped paying its debts as they fall due.

55. No step has been taken to initiate any process by or under which the ability of the creditors of the Company to take any action to enforce their debts is suspended, restricted or prevented or a person is appointed to manage the affairs, business and assets of the Company.

56. In relation to the Company:

(a) no administrator has been appointed;

(b) no documents have been filed with the court for the appointment of an administrator; and

(c) no notice of an intention to appoint an administrator has been given by the Company, its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986).

57. No process has been initiated which would lead to the Company being dissolved and its assets being distributed among its creditors, shareholders or other contributors.

58. No distress, execution or other process has been levied on an asset of the Company.

ASSETS

59. The Company is the full legal and beneficial owner without Encumbrance of, and has good and marketable title to and has possession and control of all the assets included in the Accounts, any assets acquired since the Accounts Date and all other assets used by the Company, except for those disposed of since the Accounts Date in the normal course of business.

CONDITION OF STOCK IN TRADE

60. The stock-in-trade of the Company is in good condition and is capable of being sold by the Company in the ordinary course of its business in accordance with its current price list without discount, rebate or allowance to a buyer.

ENVIRONMENTAL

The definitions in this paragraph apply in this agreement.

Hazardous Substances: any natural or artificial substance (whether solid, liquid or gas and whether alone or in combination with any other substance or radiation), capable of causing harm to any human or other living organism or the Environment.

Environment: air, water and land, all living organisms and natural or man-made structures.

Environmental Law: any law in so far as it relates to Environmental Matters.

Environmental Matters: the protection of human health, the protection and condition of the Environment, the condition of the workplace, the generation, transportation, storage, treatment, emission, deposit and disposal of any Hazardous Substance or Waste.

Waste: all waste, including any unwanted or surplus substance irrespective of whether it is capable of being recycled or recovered or has any value.

61. All permits, consents and licences required or issued under Environmental Law which are necessary for carrying on the Business are in full force and effect and have been complied with and, so far as the Warrantors are aware, there are no circumstances (including, but not limited to, the sale of the Sale Shares to the Buyer) likely to give rise to the modification, suspension or revocation of or lead to the imposition of unusual or onerous conditions on, or to prejudice the renewal of any of those permits, consents or licences.

62. The Company has at all times complied with all Environmental Laws applicable to it.

63. No proceeding or action relating to Environmental Law has been taken, is pending or threatened against the Company or any employees, directors or officers of the Company by any competent authority or any other person.

INTELLECTUAL PROPERTY

64. The definition in this paragraph applies in this agreement.

Intellectual Property Rights: patents, rights to inventions, utility models, copyright, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

65. The Company does not own any Intellectual Property Rights.

66. Complete and accurate particulars are set out in Schedule 6 respectively of all licences, agreements, authorisations and permissions (in whatever form and whether express or implied) under which the Company uses or exploits Intellectual Property Rights owned by any third party and nothing is due to be done within 30 days of Completion which would jeopardise the use of such Intellectual Property Rights.

67. The agreements and licences set out in Schedule 6:

    (a) are valid and binding;

    (b) have not been the subject of any breach or default by any party or of any event which, with the giving of notice or lapse of time, would constitute a default;

(c) are not the subject of any claim, dispute or proceeding, pending or threatened;

(d) have, where required, been duly recorded or registered; and

(e) are all the agreements and licenses necessary for the operation of the Business.

68. A Change of Control of the Company will not result in the termination of or materially affect any of the Intellectual Property Rights set out in Schedule 6.

69. The activities of the Company do not infringe any third party Intellectual Property Rights.

70. The Buyer acknowledges and agrees that there shall be no breach of Warranty in respect of paragraph 67(b) and 69 to the extent that the Company has been and is acting in accordance with the provisions of its Franchise Agreement with Build-a-Bear Workshop Franchise Holdings, Inc.

INFORMATION TECHNOLOGY

The definitions in this paragraph apply in this agreement.

IT System: all computer hardware (including network and telecommunications equipment) and software (including associated preparatory materials, user manuals and other related documentation) owned, used, leased or licensed by or to the Company.

71. The IT System has been properly maintained, is in good working order and is, in the reasonable opinion of the Warrantors, sufficient for the purposes of the Business as at the date hereof.

EMPLOYMENT

The definitions in this paragraph apply in this agreement.

Employment Legislation: legislation applying in England and Wales affecting contractual or other relations between employers and their employees or workers, including but not limited to any legislation and any amendment, extension or re enactment of such legislation and any claim arising under European treaty provisions or directives enforceable against the Company by any Employee or Worker.

Employee: any person employed by the Company under a contract of employment.

Worker: any person who personally performs work for the Company but who is not in business on their own account or in a client/customer relationship.

72. The name of each person who is a Director is set out in Schedule 1.

73. The Disclosure Letter includes anonymised details of all Employees and Workers of the Company and the principal terms of their contract.

74. The Disclosure Letter includes anonymised details of all persons who are not Workers and who are providing services to the Company under an agreement which is not a contract of employment with the Company (including, in particular, where the individual

acts as a consultant or is on secondment from a company) and the particulars of the terms on which the individual provides services.

75. The Disclosure Letter includes anonymised details of all Employees and Workers of the Company who are on secondment, maternity, paternity, adoption or other leave or absent due to ill-health or for any other reason.

76. No notice to terminate the contract of employment of any Employee or Worker of the Company (whether given by the relevant employer or by the Employee or Worker) is pending, outstanding or threatened and no dispute under any Employment Legislation or otherwise is outstanding between:

    (a) the Company and any of its current or former Employees relating to their employment, its termination and any reference given by the Company regarding them; or

    (b) the Company and any of its current or former Workers relating to their contract, its termination and any reference given by the Company regarding them.

77. No offer of employment or engagement has been made by the Company that has not yet been accepted, or which has been accepted but where the employment or engagement has not yet started.

78. The acquisition of the Sale Shares by the Buyer and compliance with the terms of this agreement will not enable any Directors, officers or [senior] Employees of the Company to terminate their employment or receive any payment or other benefit.

79. All contracts between the Company and its Employees and Workers are terminable at any time on three months' notice or less without compensation (other than for unfair dismissal or a statutory redundancy payment or any liability on the part of the Company other than wages, commission or pension).

80. All contracts between the Company and its Directors, Employees or Workers comply with any relevant requirements of section 319 of the Companies Act 1985.

81. The Company is not a party to, bound by or proposing to introduce in respect of any of its Directors or Employees any redundancy payment scheme in addition to statutory redundancy pay, nor is there any agreed procedure for redundancy selection.

82. The Company is not a party to, bound by or proposing to introduce in respect of any of its Directors, Employees or Workers any share option, profit sharing, bonus, commission or any other scheme (not in force at the date hereof) relating to the profit or sales of the Company (other than such scheme as Disclosed).

83. The Company has not incurred any actual or contingent liability in connection with any termination of employment of its Employees (including redundancy payments) or for failure to comply with any order for the reinstatement or re-engagement of any Employee.

84. The Company has not incurred any liability for failure to provide information or to consult with Employees under any Employment Legislation.

85. The Company has not made or agreed to make a payment or provided or agreed to provide a benefit to a present or former Director or officer, Employee or Worker or to their dependants in connection with the actual or proposed termination or suspension of employment or variation of an employment contract.

86. The Company is not involved in any material industrial or trade dispute or negotiation regarding a claim with any trade union, group or organisation of employees or their representatives representing Employees or Workers and, so far as the Warrantors are aware, there is nothing likely to give rise to such a dispute or claim.

87. There are no sums owing to or from any Employee or Worker other than reimbursement of expenses, wages for the current salary period and holiday pay for the current holiday year.

88. The Company has not offered, promised or agreed to any future variation in the contract of any Employee or Worker.

89. In respect of each Employee and Worker, the Company has:

    - performed all obligations and duties it is required to perform (and settled all outstanding claims), whether or not legally binding and whether arising under contract, statute, at common law or in equity or under any treaties including the EC Treaty or laws of the European Community or otherwise;
    - complied with the terms of any relevant agreement or arrangement with any trade union, employee representative or body of employees or their representatives (whether binding or not);
    - maintained adequate and up to date records.

90. Part 7 of the Income Tax (Earnings and Pensions) Act 2003 does not apply to any shares in the Company.

PROPERTY

The definitions in this paragraph apply in this agreement.

Current Use: the use for each Property as set out in Schedule 7.

Lease: the lease under which each Leasehold Property is held.

Leasehold Properties: the Leasehold Properties set out in Schedule 7and Leasehold Property means any one of them or part of parts of any one of them.

Previously-owned Land and Buildings: land and buildings that have, at any time before the date of this agreement, been owned (under whatever tenure) and/or occupied and/or used by the Company, but which are either no longer owned, occupied or used by the Company, or are owned, occupied or used by one of them but pursuant to a different lease, licence, transfer or conveyance.

Planning Acts: the Town and Country Planning Act 1990; the Planning (Listed Buildings and Conservation Areas) Act 1990; the Planning (Hazardous Substances) Act 1990; the Planning (Consequential Provisions) Act 1990; the Planning and Compensation

Act 1991; the Planning and Compulsory Purchase Act 2004; and any other legislation from time to time regulating the use or development of land.

Properties: the Leasehold Properties and Property means any one of them or any part or parts of any one of them.

Property Statutes: the Public Health Acts; the Occupiers Liability Act 1957; the Offices, Shops and Railway Premises Act 1963; the Health and Safety at Work etc. Act 1974; the Control of Pollution Act 1974; the Occupiers Liability Act 1984; the Environmental Protection Act 1990; the Construction (Design and Management) Regulations 1994; the Environmental Protection Act 1995; the Disability Discrimination Act 1995; the Control of Asbestos at Work Regulations 2002; and all regulations, rules and delegated legislation under, or relating to, such statutes.

Statutory Agreement: an agreement or undertaking entered into under section 18 of the Public Health Act 1936; section 52 of the Town and Country Planning Act 1971; section 33 of the Local Government (Miscellaneous Provisions) Act 1982; section 106 of the Town and Country Planning Act 1990; section 104 of the Water Industry Act 1991; and any other legislation (later or earlier) similar to these statutes.

91. The particulars of the Properties set out in Schedule 7 are true, complete and accurate.

92. The Properties are the only land and buildings owned, used or occupied by the Company.

93. The Company does not have any right of ownership, right of use, option, right of first refusal or contractual obligation to purchase, or any other legal or equitable right, estate or interest in, or affecting, any land or buildings other than the Properties.

94. The Company does not have any actual or contingent liability in respect of Previously-owned Land and Buildings.

95. Neither the Company, nor any company that is or has at any time been a Subsidiary of the Company, has given any guarantee or indemnity for any liability relating to any of the Properties.

96. The Company is solely legally and beneficially entitled to each of the Properties, and is in possession and actual occupation of the whole of it on an exclusive basis and no right of occupation has been granted to a third party.

97. All the documents of title to be delivered to the Buyer on the Completion Date shall be original documents, with all Stamp Duty Land Tax duly paid and registered, where completed.

98. Where title to any of the Properties is not registered at HM Land Registry, there is no caution against first registration of title and no event has occurred in consequence of which a caution against first registration of title could be effected.

99. There is no circumstance that could rnder any transaction affecting the title of the Company to any of the Properties liable to be set aside under the Insolvency Act 1986.

100. There are no insurance policies relating to any issue of title affecting the Properties.

101. There are, appurtenant to each of the Properties, all rights and easements necessary for their Current Use and enjoyment (without restriction as to time or otherwise).

102. The unexpired residue of the term granted by each Lease, is or will be vested in the Company and is or will be valid and subsisting against all persons, including any person in whom any superior estate or interest is vested.

103. So far as the Company is aware, in relation to each Lease, the landlord and each lessee, tenant, licensee or occupier has observed and performed in all material respects all covenants, restrictions, stipulations and other encumbrances and there has not been (expressly or impliedly) any waiver of or acquiescence to any breach of them.

104. In relation to each Lease, all principal rent and additional rent and all other sums payable by each lessee, tenant, licensee or occupier under each Lease (Lease Sums) have been paid as and when they became due and no Lease Sums have been:

- set off or withheld; or
- commuted, waived or paid in advance of the due date for payment.

105. Any consents required for the grant of each Lease, and for the assignments of each Lease, have been obtained and placed with the documents of title along with evidence of the registration of grant where completed.

106. The Properties (and the proceeds of sale from them) are free from:

- any mortgage, debenture, charge (whether legal or equitable and whether fixed or floating), rentcharge, lien or other right in the nature of security; and
- any agreement for sale or estate contract, option,

107. So far as the Company is aware, the Properties are not subject to any matters which are, or (where title to any of the Properties is not registered) would be unregistered interests which override first registration under Schedule 1 to the Land Registration Act 2002 and unregistered interests which override registered dispositions under Schedule 3 to the Land Registration Act 2002.

108. So far as the Company is aware, there are no covenants, restrictions, stipulations, easements, profits à prendre, wayleaves, licences, grants or other encumbrances (whether of a private or public nature, and whether legal or equitable) affecting the Properties which are of an onerous or unusual nature, or affect their value, or which conflict with the Current Use of the Properties.

109. So far as the Company is aware, all covenants, restrictions, stipulations and other encumbrances affecting the Properties have been fully observed and performed and no notice of any alleged breach has been received by the Company (or its predecessors in title).

110. There are no circumstances which (with or without taking other action) would entitle any third party to exercise a right of entry to, or take possession of all or any part of the Properties, or which would in any other way affect or restrict the continued possession, enjoyment or use of any of the Properties.

111. So far as the Company is aware, there are no matters which are registered as local land charges.

112. The Current Use of each of the Properties is the permitted use for the purposes of the Planning Acts. Where applicable, the Current Use of each of the Properties is in accordance with the provisions of the Leases.

113. All necessary building regulation consents have been obtained both in relation to the Current Use of the Properties and any alterations and improvements to them.

114. The Company is not aware of any claim or liability (contingent or otherwise) under the Planning Acts in respect of the Properties, or any Statutory Agreement affecting the Properties, are outstanding nor are the Properties the subject of a notice to treat or a notice of entry, and no notice, order resolution or proposal has been published for the compulsory acquisition, closing, demolition or clearance of the Properties, and, so far as the Company is aware, the Company is not aware of any matter or circumstances which would lead to any such notice, order, resolution or proposal.

115. The Company and the Subsidiaries have complied with all applicable statutory and bye- law requirements, and all regulations, rules and delegated legislation, relating to the Properties and their Current Use, including (without limitation) all requirements under the Property Statutes.

116. Each of the Properties is in a good state of repair and condition and fit for the Current Use.

117. There are no development works, redevelopment works or fitting-out works outstanding in respect of any of the Properties as opposed to the developments of which they form part.

ACCOUNTS

118. The Accounts have been prepared in accordance with the Companies Acts and with accounting standards, policies, principles and practices generally accepted in the UK and in accordance with the law of that jurisdiction.

119. The Accounts:

(a) make proper and adequate provision or reserve for all bad and doubtful debts, obsolete or slow-moving stocks and for depreciation on fixed assets;

(b) do not overstate the value of current or fixed assets; and

(c) do not understate any liabilities (whether actual or contingent).

120. The Accounts show a true and fair view of the commitments and financial position and affairs of the Company as at the Accounts Date and of the profit and loss of the Company for the financial year ended on that date.

121. The Accounts contain either provision adequate to cover, or full particulars in notes of, all Taxation (including deferred Taxation) and other liabilities (whether quantified, contingent, disputed or otherwise) of the Company as at the Accounts Date.

122. The Accounts are not affected by any unusual or non-recurring items or any other factor that would make the financial position and results shown by the Accounts unusual or misleading in any material respect.

123. The Accounts have been filed and laid before the Company in general meeting in accordance with the requirements of the Companies Acts.

124. The Accounts have been prepared on a basis consistent with the audited accounts of the Company for the prior accounting period without any change in accounting policies used.

125. The Management Accounts have been prepared on a basis consistent with that employed in preparing the previous management accounts of the Company and fairly represent the assets and liabilities and the profits and losses of the Company as at and to the date for which they have been prepared.

FINANCIAL AND OTHER RECORDS

126. All financial and other records of the Company (excluding the Accounts and the Management Accounts) including all deeds and documents belonging to the Company:

    (a) have been properly prepared and maintained;

    (b) constitute an accurate record of all matters required by law to appear in them;

    (c) do not contain any material inaccuracies or discrepancies; and

    (d) are in the possession of the Company.

127. No notice has been received or allegation made that any of those records are incorrect or should be rectified.

128. All statutory records, including accounting records, required to be kept or filed by the Company have been properly kept or filed and comply with the requirements of the Companies Acts.

CHANGES SINCE ACCOUNTS DATE

129. Since the Accounts Date:

    (a) the Company has conducted its business in the normal course and as a going concern;

    (b) there has been no material adverse change in the turnover, financial position or prospects of the Company;

    (c) the Company has not issued or agreed to issue any share or loan capital;

    (d) no dividend or other distribution of profits or assets has been, or agreed to be, declared, made or paid by the Company;

    (e) save as Disclosed, the Company has not borrowed or raised any money or taken any form of financial security and no capital expenditure has been incurred on

any individual item by the Company and the Company has not acquired, invested or disposed of (or agreed to acquire, invest or dispose of) any individual item in excess of £50,000;

(f) no shareholder resolutions of the Company have been passed other than as routine business at the annual general meeting;

(g) there has been no abnormal increase or reduction of stock in trade;

(h) none of the stock in trade reflected in the Accounts has realised an amount less than the value placed in it in the Accounts; and

(i) the Company has not offered price reductions or discounts or allowances on sales of stock in trade, or sold stock in trade at less than cost price.

EFFECT OF SALE ON SALE SHARES

130. Neither the acquisition of the Sale Shares by the Buyer nor compliance with the terms of this agreement will:

(a) cause the Company to lose the benefit of any right or privilege it presently enjoys; or

(b) relieve any person of any obligation to the Company (whether contractual or otherwise), or enable any person to determine any such obligation or any right or benefit enjoyed by the Company, or to exercise any right in respect of the Company; or

(c) give rise to, or cause to become exercisable, any right of pre-emption over the Sale Shares; or

(d) entitle any person to receive from the Company any finder's fee, brokerage or other commission in connection with the purchase of the Sale Shares by the Buyer; or

(e) result in any customer or supplier being entitled to cease dealing with the Company or to reduce substantially its existing level of business or to change the terms on which it deals with the Company; or

(f) so far as the Warrantors are aware, result in any officer or senior Employee leaving the Company; or

(g) result in a breach by the Company of contract, law, regulation, order, judgment, injunction, undertaking, decree or other like imposition; or

(h) result in the loss or impairment of or any default under any licence, authorisation or consent required by the Company for the purposes of its business; or

(i) result in the creation, imposition, crystallisation or enforcement of any Encumbrance on any of the assets of the Company; or

(j) result in any present or future indebtedness of the Company becoming due and payable, or capable of being declared due and payable, prior to its stated maturity date or in any financial facility of the Company being withdrawn; or

(k) entitle any person to acquire or affect the entitlement of any person to acquire shares in the Company.

RETIREMENT BENEFITS

131. The Company has no Pension Scheme and the Company has no obligation to provide or contribute towards pension, lump sum, death, ill health, disability or accident benefits in respect of its past or present officers and employees.

Part 2. Tax warranties

GENERAL

132. All notices, returns (including any land transaction returns), reports, accounts, computations, statements, assessments and registrations and any other necessary information submitted by the Company to any Taxation Authority for the purposes of Taxation have been made on a proper basis, were punctually submitted, were accurate and complete when supplied and remain accurate and complete in all material respects and none of the above is, or, so far as the Warrantors are aware, is likely to be, the subject of any material dispute with any Taxation Authority.

133. All Taxation (whether of the United Kingdom or elsewhere) for which the Company is or has been liable or is liable to account for has been duly paid (insofar as such Taxation ought to have been paid).

134. The Company has not made any payments representing instalments of corporation tax pursuant to the Corporation Tax (Instalment Payments) Regulations 1998 in respect of any current or preceding accounting periods and is not under any obligation to do so.

135. The Company has not paid since the date of its incorporation nor is liable to pay any penalty, fine, surcharge or interest charged by virtue of the provisions of the TMA 1970 or any other Taxation Statute.

136. The Company has not within the past 12 months been subject to any non-routine visit, audit, investigation, discovery or access order by any Taxation Authority and the Warrantors are not aware of any circumstances existing which make it likely that a visit, audit, investigation, discovery or access order will be made in the next 12 months.

137. The amount of Taxation chargeable on the Company during any accounting period since the date of its incorporation has not, to any material extent, depended on any concession, agreements or other formal or informal arrangement with any Taxation Authority.

138. All transactions in respect of which any clearance or consent was required from any Tax Authority have been entered into by the Company after such consent or clearance has been properly obtained, any application for such clearance or consent has been made on the basis of full and accurate disclosure of all relevant material facts and considerations, and all such transactions have been carried into effect only in accordance with the terms of the relevant clearance or consent.

139. The Company has duly submitted all claims, disclaimers and elections the making of which has been assumed for the purposes of the Accounts and, so far as the Warrantors are aware, none of such claims, disclaimers or elections are likely to be disputed or withdrawn.

140. The Disclosure Letter contains full particulars of all matters relating to Taxation in respect of which the Company is or at Completion will be entitled to:

(a) make any claim (including a supplementary claim), disclaimer or election for relief under any Taxation Statute or provision; and/or

(b) appeal against any assessment or determination relating to Taxation; and/or

(c) apply for a postponement of Taxation.

141. The Company is not liable to make to any person (including any Taxation Authority) any payment in respect of any liability to Taxation of any other person where that other person fails to discharge liability to Taxation to which he is or may be primarily liable.

142. The Company has sufficient records to determine the tax consequence which would arise on any disposal or realisation of any asset owned at the Accounts Date or acquired since that date but prior to Completion.

CHARGEABLE GAINS

143. The book value shown or adopted for the purposes of the Accounts as the value of each of the assets of the Company on the disposal of which a chargeable gain or allowable loss could arise does not exceed the amount which on a disposal of such asset at the date of this agreement would be deductible under section 38 of TCGA 1992.

CAPITAL ALLOWANCES

144. No balancing charge under the CAA 2001 (or any other legislation relating to capital allowances) would be made on the Company on the disposal of any pool of assets (that is, all those assets whose expenditure would be taken into account in computing whether a balancing charge would arise on a disposal of any other of those assets) or of any asset not in such a pool, on the assumption that the disposals are made for a consideration equal to the book value shown in or adopted for the purpose of the Accounts for the assets in the pool or (as the case may be) for the asset.

145. No event has occurred since the Accounts Date (otherwise than in the ordinary course of business) whereby any balancing charge may fall to be made against, or any disposal value may fall to be brought into account by the Company under the CAA 2001 (or any other legislation relating to capital allowances).

DISTRIBUTIONS

146. No distribution or deemed distribution within the meaning of sections 209, 210 or 211 of ICTA 1988 has been made (or will be deemed to have been made) by the Company except dividends shown in the Accounts and the Company is not bound to make any such distribution.

147. No rents, interest, annual payments or other sums of an income nature paid or payable by the Company or which the Company is under an existing obligation to pay in the future are or may be wholly or partially disallowable as deductions, management expenses or charges in computing profits for the purposes of corporation tax.

148. The Company has not since the date of its incorporation been engaged in, nor been a party to, any of the transactions set out in sections 213 to 218 (inclusive) of ICTA 1988, nor has it made or received a chargeable payment as defined in section 218(1) of ICTA 1988.

LOAN RELATIONSHIPS

149. All interests, discounts and premiums payable by the Company in respect of its loan relationships (within the meaning of section 81 of the Finance Act 1996) are eligible to be brought into account by the Company as a debit for the purposes of Chapter II of Part IV of the Finance Act 1996 at the time and to the extent that such debits are recognised in the statutory accounts of the Company.

CLOSE COMPANIES

150. The Company has not at any time since the date of its incorporation been a close company within the meaning of sections 414 and 415 of ICTA 1988.

INTANGIBLE ASSETS

For the purposes of this paragraph 151, references to **intangible fixed assets** mean intangible fixed assets and goodwill within the meaning of Schedule 29 to the Finance Act 2002 to which the provisions of that Schedule apply and references to an **intangible fixed asset** shall be construed accordingly.

151. The Disclosure Letter sets out the amount of expenditure on each of the intangible fixed assets of the Company and provides the basis on which any debit relating to that expenditure has been taken into account in the Accounts or, in relation to expenditure incurred since the Accounts Date, will be available to the Company and, so far as the Warrantors are aware, no circumstances have arisen since the Accounts Date by reason of which that basis might change.

152. No claims or elections have been made by the Company under Part 7 of, or paragraph 86 of Schedule 29 to, the Finance Act 2002 in respect of any intangible fixed asset of the Company.

153. Since the Accounts Date:

(a) the Company has not owned and does not currently own an asset which has ceased to be a chargeable intangible asset in the circumstances described in paragraph 108 of Schedule 29 to the Finance Act 2002;

(b) the Company has not realised or acquired an intangible fixed asset for the purposes of Schedule 29 to the Finance Act 2002; and

(c) no circumstances have arisen which have required, or, so far as the Warrantors are aware, will require, a credit to be brought into account by the Company on a revaluation of an intangible fixed asset.

COMPANY RESIDENCE AND OVERSEAS INTERESTS

154. The Company has since incorporation been resident in the United Kingdom for corporation tax purposes and has not at any time since incorporation been treated for the purposes of any double taxation arrangements having effect by virtue of section 249 of the Finance Act 1994, section 788 of ICTA 1988 or for any other tax purpose as resident in any other jurisdiction.

155. The Company does not hold shares in a company which is not resident in the United Kingdom and which would be a close company if it were resident in the United Kingdom in circumstances such that a chargeable gain accruing to the company not resident in the United Kingdom could be apportioned to the Company pursuant to section 13 of TCGA 1992.

156. The Company is not holding nor has held since the date of its incorporation any interest in a controlled foreign company within section 747 of ICTA 1988, and does not have any material interest in an offshore fund as defined in section 759 of ICTA 1988.

157. The Company does not have a permanent establishment outside the UK.

ANTI-AVOIDANCE

158. All transactions or arrangements made by the Company have been made on fully arm's length terms and there are no circumstances in which section 770A of, or Schedule 28AA to, ICTA 1988 or any other rule or provision could apply causing any Taxation Authority to make an adjustment to the terms on which such transaction or arrangement is treated as being made for Taxation purposes.

159. The Company has not at any time been a party to or otherwise involved in a transaction or series of transactions in relation to which advisers considered that there was a risk that the Company could be liable to taxation as a result of the principles in W.T Ramsey Limited v IRC (54 TC 101) or Furniss v Dawson (55 TC 324), as developed in subsequent cases.

INHERITANCE TAX

160. The Company has not made any transfer of value within sections 94 and 202 of the IHTA 1984, nor has it received any value such that liability might arise under section 199 of the IHTA 1984, nor has it been a party to associated operations in relation to a transfer of value as defined by section 268 of the IHTA 1984.

161. There is no unsatisfied liability to inheritance tax attached to or attributable to the Sale Shares or any asset of the Company and none of them are subject to any HM Revenue & Customs charge as mentioned in section 237 and 238 of the IHTA 1984.

162. No asset owned by the Company, nor the Sale Shares are liable to be subject to any sale, mortgage or charge by virtue of section 212(1) of the IHTA 1984.

VAT

163. The Company is a taxable person and is duly registered for the purposes of VAT with quarterly prescribed accounting periods, such registration not being pursuant to paragraph 2 of Schedule 1 to the VATA 1994 or subject to any conditions imposed by or

agreed with HM Revenue & Customs and the Company is not (nor, so far as the Warrantors are aware, are there any circumstances by virtue of which they may become) under a duty to make monthly payments on account under the Value Added Tax (Payments on Account) Order 1993.

164. The Company has complied with all statutory provisions, rules, regulations, orders and directions in respect of VAT.

165. All supplies made by the Company are taxable supplies and the Company has not been nor, so far as the Warrantors are aware, will be denied full credit for all input tax by reason of the operation of sections 25 and 26 of the VATA 1994 and regulations made thereunder or for any other reasons and no VAT paid or payable by the Company is not input tax as defined in section 24 of the VATA 1994 and regulations made thereunder.

166. The Company is not nor has been for VAT purposes a member of any group of companies and no act or transaction has been effected in consequence whereof the Company is or may be held liable for any VAT arising from supplies made by another company and no direction has been given by HM Revenue & Customs under Schedule 9A to the VATA 1994 as a result of which the Company would be treated for the purposes of VAT as a member of a group.

167. For the purposes of paragraph 3(7) of Schedule 10 to the VATA 1994, the Company or any relevant associates of the Company (within the meaning of paragraph 3(7) of Schedule 10 to the VATA 1994) has exercised the election to waive exemption from VAT (pursuant to paragraph 2 of Schedule 10 to the VATA 1994) only in respect of those Properties listed (as having been the subject of such an election) in the Disclosure Letter and:

    (a) all things necessary for the election to have effect have been done and in particular any notification and information required by paragraph 3(6) of Schedule 10 to the VATA 1994 has been given and any permission required by paragraph 3(9) of Schedule 10 to the VATA 1994 has been properly obtained; and

    (b) no election has or will be disapplied or rendered ineffective by virtue of the application of the provisions of paragraph 2(3AA) of Schedule 10 to the VATA 1994.

168. The Company does not own nor has since the date of its incorporation owned any assets which are capital items subject to the capital goods scheme under Part XV of the VAT Regulations 1995.

169. The Company has not made any claim for bad debt relief under section 36 of the VATA 1994 and, so far as the Warrantors are aware, and there are no existing circumstances by virtue of which any refund of VAT obtained or claimed may be required to be repaid or there could be a claw back of input VAT from any Company under section 36(4) of the VATA 1994.

STAMP DUTY AND STAMP DUTY LAND TAX

170. Any document that is necessary in proving the title of the Company to any asset which is owned by the Company at Completion or any document which the Company may wish to enforce or produce in evidence is duly stamped for stamp duty purposes.

171. Neither entering into this agreement nor Completion will result in the withdrawal of any stamp duty or stamp duty land tax relief granted on or before Completion which will affect the Company.

172. The Disclosure Letter sets out full and accurate details of any chargeable interest (as defined under section 48, Finance Act 2003) acquired or held by the Company before Completion in respect of which the Warrantors are aware or ought reasonably to be aware that an additional land transaction return will be required to be filed with a Taxation Authority and/or a payment of stamp duty land tax made on or after Completion.

Schedule 5

TAX COVENANT

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this paragraph apply in this Tax Covenant:

Buyer's Relief: means:

(a) any Accounts Relief (as defined in paragraph (a) of the definition of Liability for Taxation) or Repayment Relief (as defined in paragraph (b) of the definition of Liability for Taxation);

(b) any Post Accounts Date Relief of the Company (as defined in paragraph (c) of the definition of Liability for Taxation); and

(c) any Relief whenever arising, of the Buyer or any member of the Buyer's Tax Group other than the Company.

Buyer's Tax Group: the Buyer and any other company or companies which either are or become after Completion, or have within the seven years ending at Completion been, treated as members of the same group as, or otherwise connected or associated in any way with, the Buyer for any Tax purpose.

Event: includes (without limitation), the expiry of a period of time, the Company becoming or ceasing to be associated with any other person for any Tax purpose or ceasing to be or becoming resident in any country for any Tax purpose, the death or the winding up or dissolution of any person, and any transaction (including the execution and completion of all provisions of this agreement), event, act or omission whatsoever, and any reference to an Event occurring on or before a particular date shall include Events which for Tax purposes are deemed to have, or are treated or regarded as having, occurred on or before that date.

Liability for Taxation: any liability of the Company to make a payment of or in respect of Tax whether or not the same is primarily payable by the Company and whether or not the Company has or may have any right of reimbursement against any other person or persons and shall also include:

(a) the Loss of any Relief (**Accounts Relief**) where such Relief has been taken into account in computing and so reducing or eliminating any provision for deferred Tax which appears in the Accounts (or which but for such Relief would have appeared in the Accounts) or where such Relief was treated as an asset of the Company in the Accounts or was taken into account in computing any deferred Tax asset which appears in the Accounts (**Loss of an Accounts Relief**), in which case the amount of the Liability for Taxation will be the amount of Tax which would (on the basis of Tax rates current at the date of such Loss) have been saved but for such Loss, assuming for this purpose that the Company had sufficient profits or was otherwise in a position to use the Relief;

(b) the Loss of any right to repayment of Tax (including any repayment supplement) (**Repayment Relief**) which was treated as an asset in the Accounts (**Loss of a**

Repayment Relief), in which case the amount of the Liability for Taxation will be the amount of the loss of the right to repayment and any related repayment supplement;

(c) the set off or use against income, profits or gains earned, accrued or received or against any Tax chargeable in respect of an Event occurring on or before the Accounts Date of any Relief (**Post Accounts Date Relief**) or right to repayment of Tax (including any repayment supplement) which is not available before the Accounts Date but arises after the Accounts Date in circumstances where, but for such set off or use, the Company would have had a liability to make a payment of or in respect of Tax for which the Buyer would have been able to make a claim against the Warrantors under this Tax Covenant (**Loss of a Post-Accounts Date Relief**), in which case, the amount of the Liability for Taxation shall be the amount of Tax saved by the Company as a result of such set off or use;

(d) any liability of the Company to make a payment pursuant to an indemnity, guarantee or covenant entered into before Completion under which the Company has agreed to meet or pay a sum equivalent to or by reference to another person's Tax liability, in which case the Liability for Taxation shall be equal to the amount of the liability.

Loss: any reduction, modification, loss, counteraction, nullification, utilisation, disallowance or claw-back for whatever reason.

Overprovision: the amount by which any provision in the Accounts relating to Tax (other than a provision for deferred Tax) is overstated (except to the extent that such overstatement results from the utilisation of a Buyer's Relief), applying the accounting policies, principles and practices adopted in relation to the preparation of the Accounts (and ignoring the effect of any change in law made after Completion).

Relief: includes any loss, relief, allowance, credit, exemption or set off in respect of Tax or any deduction in computing income, profits or gains for the purposes of Tax and any right to a repayment of Tax.

Saving: the reduction or elimination of any liability of the Company to make an actual payment of Tax in respect of which the Warrantors would not have been liable under paragraph 2, by the use of any Relief arising wholly as a result of a Liability for Taxation in respect of which the Warrantors have made a payment under paragraph 2 of this Tax Covenant.

Tax: all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of the UK or any other jurisdiction; and any penalty, fine, surcharge, interest, charges or costs relating thereto, and Taxation shall have the same meaning.

Tax Claim: any assessment (including self-assessment), notice, demand, letter or other document issued or action taken by or on behalf of any Taxation Authority from which it appears that the Company or the Buyer is or may be subject to a Liability for Taxation or other liability in respect of which the Warrantors are or may be liable under this Tax Covenant.

Taxation Authority: HM Revenue & Customs, the Department of Social Security and any other governmental authority whatsoever competent to impose any Tax whether in the United Kingdom or elsewhere

Taxation Statute: any directive, statute, enactment, law or regulation wheresoever enacted or issued, coming into force or entered into providing for or imposing any Tax and shall include orders, regulations, instruments, bye-laws or other subordinate legislation made under the relevant statute or statutory provision and any directive, statute, enactment, law, order, regulation or provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same.

1.2 References to **gross receipts, income, profits** or **gains** earned, accrued or received shall include any gross receipts, income, profits or gains deemed pursuant to the relevant Taxation Statute to have been or treated or regarded as earned, accrued or received.

1.3 References to a **repayment of Tax** shall include any repayment supplement or interest in respect of it.

1.4 A reference to an **Event occurring on or before Completion** includes a series or combination of Events which are linked all of which were or the first of which was an Event occurring on or before Completion.

1.5 Any reference to something occurring in the ordinary course of business shall, without prejudice to the generality thereof, be deemed not to include:

(a) anything which involves, or leads directly or indirectly to, any liability of the Company to Tax that is the primary liability of, or properly attributable to, or due from another person (other than a member of the Buyer's Tax Group) or is the liability of the Company only because some other person, other than a member of the Buyer's Tax Group, has failed to pay it or is the liability of the Company because it has elected to be regarded as taxable or liable or to be regarded as having made a disposal; or

(b) anything which relates to or involves the acquisition or disposal of an asset or the supply of services (including the lending of money, or the hiring or licensing of tangible or intangible property) in a transaction which is not entered into on arm's length terms; or

(c) anything which relates to or involves the making of a distribution for Tax purposes, the creation, cancellation or re-organisation of share or loan capital, the creation, cancellation or repayment of any intra-group debt or the Company becoming or ceasing to be associated or connected with any other company for any Tax purposes; or

(d) anything which relates to a transaction or arrangement which includes, or a series of transactions or arrangements which includes, any step or steps having no commercial or business purpose apart from the reduction, avoidance or deferral of a Liability for Taxation; or

(e) anything which gives rise to a Liability for Taxation on deemed (as opposed to actual) profits or to the extent that it gives rise to a Liability for Taxation on an

amount of profits greater than the difference between the sale proceeds of an asset and the amount attributable to that asset in the Accounts or, in the case of an asset acquired since the Accounts Date, the cost of that asset; or

(f) anything which involves, or leads directly or indirectly to, a change of residence of the Company for Tax purposes.

1.6 Unless the contrary intention appears, words and expressions defined in this agreement have the same meaning in this Tax Covenant and any provisions in this agreement concerning matters of construction or interpretation also apply in this Tax Covenant.

1.7 For the avoidance of doubt, references to any Liability for Taxation of the Company which results from any gains earned or received on or before Completion or any Event on or before Completion include a reference to any Liability for Taxation of the Company resulting from the sale of the Sale Shares pursuant to this agreement (including, without limitation, any liability arising under section 179 of TCGA 1992).

2. COVENANT

The Warrantors covenant with the Buyer that, subject to the provisions of this Tax Covenant, the Warrantors shall pay to the Buyer, to the extent possible, but not so as to limit the amount payable where not wholly possible, by way of repayment of the consideration for the Sale Shares, an amount equal to any:

(a) Liability for Taxation resulting from or by reference to any Event occurring on or before Completion or in respect of any gross receipts, income, profits or gains earned, accrued or received by the Company on or before Completion;

(b) Liability for Taxation which arises solely as a result of the relationship for Tax purposes of the Company with any person other than a member of the Buyer Tax Group whensoever arising;

(c) payment of interest or penalties for which the Company is liable as a result of the Company failing to make any instalment payment under the Corporation Tax (Instalment Payments) Regulations 1998 in any period ending on or before Completion sufficient to avoid such interest or penalties;

(d) Liability for Taxation falling within paragraph (a) to paragraph (d) of the definition of Liability for Taxation; and

(e) costs and expenses referred to in paragraph 11.

3. PAYMENT DATE AND INTEREST

3.1 Where the Warrantors are liable to make any payment under paragraph 2 (including any payment pursuant to paragraph 2(e)), the due date for the making of that payment (Due Date) shall be the earlier of the date falling seven days after the Buyer has served a notice on the Warrantors demanding that payment and in a case:

(a) that involves an actual payment of Tax (including any payment pursuant to paragraph 2(e)) by the Company, the date on which the Tax in question would have had to have been paid to the relevant Taxation Authority in order to

prevent a liability to interest or a fine, surcharge or penalty from arising in respect of the Liability for Taxation in question; or

(b) that falls within paragraph (a) of the definition of Liability to Taxation, the last date upon which the Tax is or would have been required to be paid to the relevant Taxation Authority in respect of the period in which the Loss of the Relief occurs (assuming for this purpose that the Company had sufficient profits or was otherwise in a position to use the Relief); or

(c) that falls within paragraph (b) of the definition of Liability to Taxation, the date upon which the repayment was due from the relevant Taxation Authority; or

(d) that falls within paragraph (c) of the definition of Liability to Taxation, the date upon which the Tax saved by the Company is or would have been required to be paid to the relevant Taxation Authority; or

(e) that falls within paragraph (d) (liability for indemnity, guarantee or covenant payment) of the definition of Liability for Taxation, not later than the fifth day before the day on which the Company is due to make the payment or repayment.

3.2 Any dispute as to the amount specified in any notice served on the Seller under paragraph 3.1(b) to paragraph 3.1(e) shall be determined by the auditors of the Company for the time being, acting as experts and not as arbitrators (the costs of that determination being shared equally by the Warrantors and the Buyer).

3.3 If any sums required to be paid by the Warrantors under this Tax Covenant are not paid on the Due Date, then, except to the extent that the Warrantors liability under paragraph 2 compensates the Buyer for the late payment by virtue of it extending to interest and penalties, such sums shall bear interest (which shall accrue from day to day after as well as before any judgment for the same) at the rate of 2% per annum over the base rate from time to time of HSBC or (in the absence thereof) at such similar rate as the Buyer shall select from the day following the Due Date up to and including the day of actual payment of such sums, such interest to be compounded quarterly.

4. EXCLUSIONS

4.1 The covenant contained in paragraph 2 above shall not cover any Liability for Taxation to the extent that:

(a) a provision or reserve in respect thereof is made in the Accounts; or

(b) it arises as a result of a transaction in the ordinary course of business of the Company between the Accounts Date and Completion and is not an interest or penalty (which expression includes interest or penalties under the Corporation Tax (Instalment Payments) Regulations 1998), surcharge or fine in connection with Tax; or

(c) it arises or is increased as a result only of any change in the law of Tax announced and coming into force after Completion (whether relating to rates of Tax or otherwise) or the withdrawal, after Completion, of any extra-statutory concession previously made by a Taxation Authority (whether or not the change purports to

be effective retrospectively in whole or in part) or any change in the published practice of any Taxation Authority after Completion; or

(d) it would not have arisen but for a change after Completion in the accounting bases upon which the Company values its assets (other than a change made in order to comply with UK GAAP); or

(e) the Buyer is compensated for any such matter under any other provision of this agreement; or

(f) it would not have arisen but for a voluntary act or transaction carried out by the Buyer or the Company after Completion being an act which:

(i) is not in the ordinary course of business; or

(ii) could reasonably have been avoided; or

(iii) the Company was not legally committed to do under a commitment that existed on or before Completion; or

(iv) the Buyer was aware would give rise to the Liability for Taxation in question; or

(g) the Liability for Taxation arises from a matter disclosed in the Disclosure Letter;

(h) the Liability for Taxation has been made good or otherwise compensated for at no expense to the Buyer or the Company;

(i) the Liability for Taxation is attributable to the Company ceasing to be entitled to the small companies' rate of corporation tax;

(j) the Liability for Taxation would not have arisen or would have been reduced or eliminated but for any claim, disclaimer or election made after Completion by the Buyer or the Company including, without limitation, a disclaimer of or a revision to a claim for capital allowances claimed before Completion.

5. OVERPROVISIONS

5.1 If, on or before the seventh anniversary of Completion, the auditors for the time being of the Company certify (at the request and expense of the Warrantors) that any provision for Tax in the Accounts has proved to be an Overprovision, then:

(a) the amount of any Overprovision shall first be set off against any payment then due from the Warrantors under this Tax Covenant;

(b) to the extent that there is an excess, a refund shall be made to the Warrantors of any previous payment or payments made by the Warrantors under this Tax Covenant (and not previously refunded under this Tax Covenant) up to the amount of such excess; and

(c) to the extent that excess referred to in paragraph 5.1(b) is not exhausted, the remainder of that excess will be carried forward and set off against any future

payment or payments which become due from the Warrantors under this Tax Covenant.

5.2 After the Company's auditors have produced any certificate under this paragraph 5, the Warrantors or the Buyer may, at any time before the seventh anniversary of Completion, request the auditors for the time being of the Company to review (at the expense of the party requesting such review) that certificate in the light of all relevant circumstances, including any facts of which it was not aware, and which were not taken into account, at the time when such certificate was produced, and to certify whether in their opinion the certificate remains correct or whether, in light of those circumstances, it should be amended.

5.3 If the auditors make an amendment to the earlier certificate and the amount of the Overprovision is revised, that revised amount shall be substituted for the previous amount and any adjusting payment that is required shall be made by or to the Warrantors as soon as practicable.

6. SAVINGS

6.1 If (at the Warrantors request and expense) the auditors for the time being of the Company determine that the Company has obtained a Saving, the Buyer shall as soon as reasonably practicable thereafter repay to the Warrantors the lesser of:

(a) the amount of the Saving (as determined by the auditors) less any costs incurred by the Buyer or the Company; and

(b) the amount paid by the Warrantors under paragraph 2 in respect of the Liability for Taxation which gave rise to the Saving less any part of that amount previously repaid to the Warrantors under any provision of this Tax Covenant or otherwise.

7. RECOVERY FROM THIRD PARTIES

7.1 Where the Warrantors have paid an amount in full discharge of a liability under paragraph 2 in respect of any Liability for Taxation and the Buyer or the Company is or becomes entitled to recover from some other person not being the Buyer or the Company or any other company within the Buyer's Tax Group, any amount in respect of such Liability for Taxation, the Buyer shall or shall procure that the Company shall:

(a) notify the Warrantors of its entitlement as soon as reasonably practicable; and

(b) if required by the Warrantors and, subject to the Buyer or the Company being indemnified by the Warrantors against any Tax that may be suffered on receipt of that amount and any costs and expenses incurred in recovering that amount, take or procure that the Company takes all reasonable steps to enforce that recovery against the person in question (keeping the Warrantors fully informed of the progress of any action taken) provided that the Buyer shall not be required to take any action pursuant to this paragraph 7.1 (other than an action against:

(i) a Taxation Authority; or

(ii) a person who has given Tax advice to the Company on or before Completion),

which, in the Buyer's reasonable opinion, is likely to harm its or the Company's commercial relationship (potential or actual) with that or any other person.

7.2 If the Buyer or the Company recovers any amount referred to in paragraph 7.1, the Buyer shall account to the Warrantors for the lesser of:

(a) any amount recovered (including any related interest or related repayment supplement) less any Tax suffered in respect of that amount and any costs and expenses incurred in recovering that amount (save to the extent that amount has already been made good by the Warrantors under paragraph 7.1(b)); and

(b) the amount paid by the Warrantors under paragraph 2 in respect of the Liability for Taxation in question.

8. CORPORATION TAX RETURNS

8.1 The Warrantors or their duly authorised agent prepare the corporation tax returns and computations of the Company for all accounting periods ended on or prior to the Accounts Date, to the extent that the same have not been prepared before Completion, and submit them to the Buyer.

8.2 The Buyer shall procure that the returns and computations referred to in paragraph 8.1 shall be authorised, signed and submitted to the relevant Taxation Authority without amendment or with such amendments as the Buyer reasonably considers to be necessary and shall give the Warrantors or their agent all such assistance as may reasonably be required to agree those returns and computations with the relevant Taxation Authority provided that the Buyer shall not be obliged to take any such action as is mentioned in this paragraph 8.2 in relation to any return that is not full, true and accurate in all material respects.

8.3 The Warrantors or their duly authorised agent shall prepare all documentation and shall have conduct of all matters (including correspondence) relating to the corporation tax returns and computations of the Company for all accounting periods ended on or prior to the Accounts Date provided that the Warrantors shall not without the prior written consent of the Buyer (not to be unreasonably withheld or delayed) transmit any communication (written or otherwise) to the relevant Taxation Authority or agree any matter with the relevant Taxation Authority.

8.4 The Buyer shall procure that the Company afford such access to their books, accounts and records as is necessary and reasonable to enable the Warrantors or their duly authorised agent to prepare the corporation tax returns and computations of the Company for all accounting periods ended on or before the Accounts Date and conduct matters relating to them in accordance with this paragraph 8.

8.5 The Warrantor shall take all reasonable steps to ensure that the corporation tax returns and computations of the Company for all accounting periods ended on or before the Accounts Date are prepared and agreed with the relevant Taxation Authority in a timely manner.

8.6 For the avoidance of doubt:

(a) where any matter relating to Tax gives rise to a Tax Claim, the provisions of paragraph 9 shall take precedence over the provisions of this paragraph 8; and

(b) the provisions of this paragraph 8 shall not prejudice the rights of the Buyer to make a Tax Claim under this Tax Covenant in respect of any Liability for Taxation.

9. CONDUCT OF TAX CLAIMS

9.1 If the Buyer or the Company becomes aware of a Tax Claim, the Buyer shall give or procure that notice in writing is given to the Warrantors as soon as is reasonably practicable, provided that if the Warrantors receive any Tax Claim for whatever reason, they shall notify the Buyer in writing as soon as is reasonably practicable and the Buyer shall be deemed on receipt of such notification to have given the Warrantors notice of such Tax Claim in accordance with the provisions of this paragraph 9 provided always that the giving of such notice shall not be a condition precedent to the Warrantors' liability under this Tax Covenant.

9.2 Provided that the Warrantors indemnify the Buyer and the Company to the Buyer's reasonable satisfaction against all liabilities, costs, damages or expenses which may be incurred thereby including any additional Liability for Taxation, the Buyer shall take and shall procure that the Company shall take such action as the Warrantors may reasonably request by notice in writing given to the Buyer or the Company to avoid, dispute, defend, resist, appeal or compromise any Tax Claim (such a Tax Claim where action is so requested being hereinafter referred to as a Dispute), provided that neither the Buyer nor the Company shall be obliged to appeal or procure an appeal against any assessment to Tax raised on any of them if, the Warrantors having been given written notice of the receipt of such assessment, the Buyer or the Company have not within 14 days of the date of the notice, received instructions in writing from the Warrantors to do so.

9.3 If:

(a) the Warrantors do not request the Buyer or the Company to take any action under paragraph 9.2 or fails to indemnify the Buyer or the Company to the Buyer's reasonable satisfaction within a period of time (commencing with the date of the notice given to the Warrantors) that is reasonable having regard to the nature of the Tax Claim and the existence of any time limit in relation to avoiding, disputing, defending, resisting, appealing or compromising such Tax Claim, and which period will not in any event exceed a period of 14 days; or

(b) the Warrantors (or the Company before Completion) have been involved in a case involving fraudulent conduct or wilful default in respect of the Liability for Taxation which is the subject matter of the Dispute; or

(c) the Dispute involves an appeal against a determination by the General or Special Commissioners of the VAT and Duties Tribunal, unless the Warrantors have obtained the opinion of Tax counsel of at least 5 years' standing that there is a reasonable prospect that the appeal will succeed, the Buyer or the Company shall have the conduct of the Dispute absolutely (without prejudice to its rights under this Tax Covenant) and shall be free to pay or settle the Tax Claim on such terms as the Buyer or the Company may in its absolute discretion consider fit.

9.4 Subject to paragraph 9.3, by agreement in writing between the Buyer and the Warrantors, the conduct of a Dispute may be delegated to the Warrantors upon such terms as may be agreed from time to time between the Buyer and the Warrantors, provided that, unless the Buyer and the Warrantors specifically agree otherwise in writing, the following terms shall be deemed to be incorporated into any such agreement:

(a) the Buyer or the Company shall promptly be kept fully informed of all matters pertaining to a Dispute and shall be entitled to see and keep copies of all correspondence and notes or other written records of telephone conversations or meetings and, in the event that there is no written record, shall be given an immediate report of all telephone conversations with any Taxation Authority to the extent that it relates to a Dispute;

(b) the appointment of solicitors or other professional advisers shall be subject to the approval of the Buyer, such approval not to be unreasonably withheld or delayed;

(c) all material written communications pertaining to the Dispute which are to be transmitted to the relevant Taxation Authority shall first be submitted to the Buyer or the Company for approval and shall only be finally transmitted if such approval is given, which approval is not to be unreasonably withheld or delayed; and

(d) the Warrantors shall make no settlement or compromise of the Dispute or agree any matter in the conduct of the Dispute which is likely to affect the amount thereof or the future liability to Tax of the Buyer or the Company without the prior approval of the Buyer or the Company (as may be appropriate), such approval not to be unreasonably withheld or delayed.

9.5 The Buyer shall provide and shall procure that the Company provides to the Warrantors and their professional advisors reasonable access to premises and personnel and to any relevant assets, documents and records within their power, possession or control for the purpose of investigating the matter and enabling the Warrantors to take such action as is referred to in this paragraph 9.

9.6 Neither the Buyer nor the Company shall be subject to any claim by or liability to the Warrantors for non-compliance with any of the provisions of this paragraph 9 if the Buyer or the Company has bona fide acted in accordance with the instructions of the Warrantors.

10. GROSSING UP

10.1 All sums payable by the Warrantors to the Buyer under this Tax Covenant shall be paid free and clear of all deductions or withholdings whatsoever unless the deduction or withholding is required by law. If any deductions or withholdings are required by law to be made from any of the sums payable under this Tax Covenant, the Warrantors shall pay to the Buyer such sum as will, after the deduction or withholding has been made, leave the Buyer with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding. If any additional amount is paid pursuant to this paragraph by virtue of any deduction or withholding being required by law to be made and the Buyer receives a tax credit, repayment or other benefit by reason of any deduction or withholding in respect of which the Warrantors

have paid an additional amount, the Buyer shall pay to the Warrantors forthwith the amount of such tax credit, repayment or other benefit.

10.2 If the Buyer incurs a taxation liability which results from, or is calculated by reference to, any sum paid under this Tax Covenant, the amount so payable shall be increased by such amount as will ensure that, after payment of the taxation liability, the Buyer is left with a net sum equal to the sum it would have received had no such taxation liability arisen.

10.3 If the Buyer would, but for the availability of a Buyer's Relief, incur a taxation liability falling within paragraph 10.2, it shall be deemed for the purposes of that paragraph to have incurred and paid that liability

10.4 If the Buyer assigns the benefit of this Tax Covenant or this agreement, the Warrantors shall not be liable pursuant to paragraph 10.1 or paragraph 10.2, save to the extent that the Warrantors would have been so liable had no such assignment occurred.

11. COSTS AND EXPENSES

The covenant contained in paragraph 2 of this Tax Covenant shall extend to all costs and expenses incurred by the Buyer or the Company in connection with any matter included under paragraph 2 of this Tax Covenant and the enforcement of rights under this Tax Covenant.

Schedule 6

INTELLECTUAL PROPERTY RIGHTS LICENSED FROM THIRD PARTIES

1) Sub-Licence Agreement dated December 26 2003 between Build-A-Bear Workshop, Inc (1) and Amsbra Ltd (2) re: trademarks owned by Sketchers USA, Inc.;

2) Retail product licence between Amsbra Ltd and Sheffield Wednesday Football Club to sell Sheffield Wednesday football kit dated June 2005.

PENDING APPLICATIONS FOR TRADEMARK REGISTRATION (EUROPEAN UNION)

Mark	Application Number	Classes
A BOOK STUFFED WITH MEMBEARIES	PENDING	16,28,41
A PAWSITIVELY FUN FAMILY EXPERIENCE	PENDING	28,35,41
AIR BATH DESIGN	PENDING	35,41,42
ALL THE BUZZ THAT'S BROUGHT TO BEAR	PENDING	16
AUDIO SOUND STATIONS DESIGN STORE FIXTURE	PENDING	35,41,42
BEAR BUCKS	PENDING	9,16
BEAR HEAD DESIGN	PENDING	9,16,18,25,28,35,38,41,42
BEAR STUFF	PENDING	28,35
BEAR STUFF CLEANER	PENDING	3
BEARANTEE	PENDING	28,35,41
BEARARMOIRE	PENDING	16,28,35,41,42
BEARAMOIRE DESIGN	PENDING	28,35,41
BEAREMY	PENDING	28,35,41
BEAREMY'S KENNEL PALS	PENDING	28
BEARISM	PENDING	16,28,35
BEARY FUN CLUBHOUSE	PENDING	28,35,41
BEARY NEWSWORTHY	PENDING	16,35,42
BEARYJANE	PENDING	28,35,41
BUILD-A-BEAR WORKSHOP	PENDING	6,9,14,16,18,20,21,24,25,28,35,39,41
BUILD-A-BEAR WORKSHOP & DESIGN	PENDING	9,14,18,25,36,41
BUILD-A-DOLL WORKSHOP	PENDING	6,9,14,16,18,20,21,25,28,35,42

Mark	Application Number	Classes
BUILD-A-GRAM	PENDING	28,39,41
BUILD-A-PARTY	PENDING	28,35,41
BUTTON DESIGN	PENDING	16,25,28,35,41,42
BUTTON WALL WITH SPOOL DESIGN STORE FIXTURE	PENDING	16,35,41
BUY STUFF CLUB	PENDING	16,35,41
CASH COUNTER DESIGN	PENDING	35,41,42
CHOOSE ME HEAR ME STUFF ME STITCH ME FLUFF ME NAME ME DRESS ME TAKE ME HOME	PENDING	35,39
CLOTHES HANGER DESIGN	PENDING	28
COLLECTIBEAR	PENDING	28,35,41
COLLECTIBUNNY	PENDING	28
CUBCASE	PENDIGN	28
CUBCASE DESIGN	PENDING	28,35,41
CUB CONDO	PENDING	28
CUB CONDO DESIGN	PENDING	16,35,41
FIND-A-BEAR	PENDING	28,35,40,42
FLORA BEAR	PENDING	28
FRIENDSHOP	PENDING	25,28,35
FUN SHUI	PENDING	16,28
FUR SHUI	PENDING	16,28
HEART & PAWPRINT DESIGN	PENDING	28K,35,41
HIBERNITIES	PENDING	3,24,25,28
LIL CUB	PENDING	28
LOVE STUFF HEADQUARTERS	PENDING	28,35,41
MEMBEARIES	PENDING	16,28,41
PAWLETTE COUFUR	PENDING	16,28
PAWSIZER	PENDING	28
SEWING COLUMN DESIGN	PENDING	35,41
SHOE HANGER DESIGN STORE FIXTURE	PENDING	18,25,28
SHOE SOLE #1 DESIGN	PENDING	28,35,41
SHOE SOLE #2 DESIGN	PENDING	28,35,41
SHOE SOLE #3 DESIGN	PENDING	28,35,41
SPOOL & TREE DESIGN STORE FIXTURE	PENDING	35,41,42

Mark	Application Number	Classes
SPOOL DESIGN STORE FIXTURE	PENDING	35,41
STITCHED WITH LOVE	PENDING	25,28,35
TEDDY BEAR CENTENNIAL	PENDING	25,28
TEDDYOLOGY	PENDING	28,35,41
THE BEAR PROMISE	PENDING	35,41,42
THE BEARY BEGINNING	PENDING	16,28,41
TOY FURNITURE CARRIER (Comfy Stuff Carrier)	PENDING	28,35
UNDIBEAR	PENDING	3,25,28
UNITED FOR THE PAWS	PENDING	28,35,36
WHERE BEST FRIENDS ARE MADE	PENDING	9,16,25,28,35,41
WHERE BEST FRIENDS FIND COMFY STUFF	PENDING	35
WHERE SPECIAL MEMORIES ARE MADE	PENDING	28,35,41
WORKSHOP	PENDING	25,28,35
WORLD'S BEAR FAIR	PENDING	35,41,42
WORLDWIDE CUB CLUB	PENDING	16,35,41
ZIPPER COLUMN DESIGN STORE FIXTURE	PENDING	35, 41

REGISTERED TRADEMARKS (EUROPEAN UNION

Mark	Application Number	Classes
BABW	1,709,013	28,35,41
BEARITAGE	1,724,301	28,35,41
BEARRIFIC	1,724,285	28
BUILD-A-BEAR WORKSHOP & DESIGN	621,334	16,28,35,42
BUILD-A-BEAR WORKSHOP WHERE BEST FRIENDS ARE MADE & MEDALLION DES	1,010,834	6,9,14,16,18,20,21, 24,25,26,28,35,39,41,42
BUILD-A-SOUND	1,792,134	9,35,41
CUB CASH	2,086,783	16
CUB CONDO DESIGN	1,337,831	28,42
FLUFF AND STUFF	1,296,615	35,41,42

Mark	Application Number	Classes
HEART IN A BEAR TRADE DRESS	1,399,229	28,35,41,42
HEAR STUFF & DESIGN	1,430,446	28,35,41
JELLI BEARS	1,719,533	28
LIL O' CUB	1,719,673	28
MAKING FRIENDS THAT MAKE A DIFFERENCE	2,094,431	25,28,35
OUR FOUNDING TEDDY	2,086,684	28
SCOOTFUR	2,181,964	28
STORE FRONT DESIGN	1,001,817	35,42
STUFFED WITH HUGS AND GOOD WISHES	1,649,953	28
TRAVELLING TEDDY	1,328,699	28

REGISTERED TRADEMARK (UNITED KINGDOM)

Mark	Application Number	Classes
BUILD-A-BEAR WORKSHOP WHERE BEST FRIENDS ARE MADE & Medallion Design	2,253,128	28,35

Part B – Copyright

1. The Build-a-Bear "Operating Manual" including all marks and trade dress together with such other rights granted in the Build-a-bear Franchise Agreement.

Schedule 7

PARTICULARS OF PROPERTIES

Part 1. Leasehold properties

1. 33 Fremlin Walk, Maidstone, Kent ME14 1QG.
2. Ground Floor Premises at Unit 9 North Piazza, Covent Garden, London WC2.
3. Shop Unit No. 69 Croydon Centrale Shopping Centre, Croydon — Title Number SGL651624.
4. Unit 229, The Chimes Shopping Centre, Uxbridge.
5. Unit 19 Whitefriars, 7 Gravel Walk, Canterbury.
6. Unit 17 Culver Precinct, Culver Street West and Head Street, Colchester, Essex.
7. Unit 36 Halle Square, Manchester, Arndale.
8. Office 21, St Stephen’s House and Grounds.
9. Unit 103 Central Court, Wimbledon, London SW19.
10. Unit 66B (21B Park Lane), The Meadowhall Centre, Sheffield.
11. Unit 36, The Centre (also known as 131 Silbury Arcade), Centre Milton Keynes, Bucks — Title Number BM297374.
12. Unit 18, The Glades Shopping Centre, Bromley.

Execution Page

Signed by for and on behalf of **WITTINGTON** **INVESTMENTS LIMITED** Steven Bedford as Attorney	)))	/s/ SWB
Signed by **NSS TRUSTEES LIMITED AND** **SIMON BENTLEY** for and on behalf of **REGENT'S PARK ESTATES PENSION** **SCHEME** Steven Bedford as Attorney	)))	/s/ SWB
Signed by **MALCOLM DALGLEISH** Steven Bedford as Attorney	)	/s/ SWB
Signed by for and on behalf of **GLOBAL PARTNERS** **LIMITED** Steven Bedford as Attorney	))	/s/ SWB
Signed by **JUSTIN KENDRICK** Steven Bedford as Attorney	)	/s/ SWB
Signed by **CHRISTOPHER JOHN NEWLANDS SYKES** Steven Bedford as Attorney	))	/s/ SWB
Signed by for and on behalf of **AERO SYSTEMS SA** Steven Bedford as Attorney	))	/s/SWB
Signed by for and on behalf of **MERVILLE LIMITED** Steven Bedford as Attorney	)	/s/ SWB
Signed by **SUE BUCHAN** Kenneth McKelvey Under Power of Attorney for	)	/s/ K. T. McKelvey

Signed by **ANDREW MACKAY** Steven Bedford as Attorney	)	/s/ SWB
Signed by for and on behalf of **BOLDSWITCH LIMITED**	)	/s/ Graham Roberts
Signed by **STEVEN BEDFORD**	)	/s/ SWB
Signed by **RUPERT ASHE** Steven Bedford as Attorney	)	/s/ SWB
Signed by Kenneth McKelvey Under Power of Attorney for and on behalf of **ANGUS SAMELS**	)	/s/ K. T. McKelvey
Signed by Kenneth McKelvey Under Power of Attorney for and on behalf of **JOHN HOWARD SMITH**	)	/s/ K. T. McKelvey
Signed by Kenneth McKelvey Under Power of Attorney for and on behalf of **KENNETH MCKELVEY**	)	/s/ K. T. McKelvey .
Signed by Kenneth McKelvey Under Power of Attorney for and on behalf of **JONATHAN PUNTER**	)	/s/ K. T. McKelvey
Signed by Kenneth McKelvey Under Power of Attorney **DAVID CULE**	)	/s/ K. T. McKelvey
Signed by Kenneth McKelvey Under Power of Attorney **GARY JACKSON**	)	/s/ K. T. McKelvey
Signed by **PAUL ROSENBLATT** Steven Bedford as Attorney	)	/s/ SWB

Signed by	)	
PHILIP LEWIS	)	/s/ SWB
Steven Bedford as Attorney		
Signed by	)	
MICHAEL MITCHELL	)	/s/ SWB
Steven Bedford as Attorney		
Signed by	)	
for and on behalf of **BUILD-A-BEAR**	)	
WORKSHOP INC	)	/s/ Maxine Clark
Signed by	)	
for and on behalf of **BUILD-A-BEAR**	)	
WORKSHOP UK HOLDINGS LIMITED	)	/s/ Maxine Clark

EXHIBIT 21.1

Subsidiaries of Build-A-Bear Workshop, Inc.

Subsidiary:	Jurisdiction of Incorporation/Organization:
Build-A-Bear Entertainment, LLC	Missouri
Build-A-Bear Workshop Franchise Holdings, Inc.	Delaware
Build-A-Bear Workshop Canada Ltd.	New Brunswick
Build-A-Bear Retail Management, Inc.	Delaware
Build-A-Bear Workshop UK Holdings Limited	United Kingdom

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Build-A-Bear Workshop,Inc.:

We consent to incorporation by reference in the registration statements (No. 333-120012) on Form S-8 of Build-A-Bear Workshop, Inc. of our reports dated March 15, 2006, with respect to the consolidated balance sheets of Build-A-Bear Workshop, Inc. and subsidiaries as of December 31, 2005, and January 1, 2005, and the related consolidated statements of operations, stockholders' equity and cash flows, for each of the years in the three-year period ended December 31, 2005, management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2005 and the effectiveness of internal over financial reporting as of December 31, 2005, which reports appear in the December 31, 2005 annual report on Form 10-K of Build-A-Bear Workshop, Inc.

/s/ KPMG LLP

St. Louis, Missouri
March 15, 2006

Exhibit 31.1

Certification of Principal Executive Officer

I, Maxine Clark, Chairman of the Board and Chief Executive Bear of Build-A-Bear Workshop, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Build-A-Bear Workshop, Inc.;

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 15, 2006 /s/ Maxine Clark

Maxine Clark
Chairman of the Board and Chief Executive Bear
Build-A-Bear Workshop, Inc.
(Principal Executive Officer)

Exhibit 31.2

Certification of Principal Financial Officer

I, Tina Klocke, Chief Financial Bear, Secretary and Treasurer of Build-A-Bear Workshop, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Build-A-Bear Workshop, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 15, 2006 /s/ Tina Klocke

Tina Klocke
Chief Financial Bear, Treasurer and Secretary
Build-A-Bear Workshop, Inc.
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the annual report of Build-A-Bear Workshop, Inc. (the "Company") on Form 10-K for the period ended December 31, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Maxine Clark, Chairman of the Board and Chief Executive Bear of the Company, certify, to the best of my knowledge, pursuant to Rule 13a-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 15, 2006 /s/ Maxine Clark

Maxine Clark
Chairman of the Board and
Chief Executive Bear
Build-A-Bear Workshop, Inc.

Exhibit 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the annual report of Build-A-Bear Workshop, Inc. (the "Company") on Form 10-K for the period ended December 31, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Tina Klocke, Chief Financial Bear, Secretary and Treasurer of the Company, certify, to the best of my knowledge, pursuant to Rule 13a-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 15, 2006 /s/ Tina Klocke

Tina Klocke
Chief Financial Bear, Treasurer and Secretary
Build-A-Bear Workshop, Inc.