

# RICKS CABARET INTERNATIONAL INC

## FORM S-3

(Securities Registration Statement (simplified form))

Filed 4/3/1998

Address	505 NORTH BELT SUITE 630 HOUSTON, Texas 77060
Telephone	281-820-1181
CIK	0000935419
Industry	Restaurants
Sector	Services
Fiscal Year	09/30

**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549  
**FORM S-3**  
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF  
**1933 RICK'S CABARET INTERNATIONAL, INC.**  
(Exact name of registrant as specified in its charter)

TEXAS  
(State or other jurisdiction of  
incorporation or organization)

3113 BERING DRIVE,  
HOUSTON, TEXAS 77057  
(713) 785-0444

(Address of principal executive  
offices, and including zip code and  
Registrant's area telephone number,  
including area code)

76-0458229  
(IRS Employer Identification No.)

ROBERT L. WATTERS  
3113 BERING DRIVE  
HOUSTON, TEXAS 77057  
(713) 785-0444

(Name and address of agent for  
service agent's telephone number,  
including code)

With copies to:  
**ROBERT D. AXELROD,**  
**5300 MEMORIAL DRIVE, SUITE 700,**  
**HOUSTON, TEXAS 77007**  
(713) 861-1996

(713) 552-0202-FAX

**APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO**  
**THE PUBLIC:** As soon as practicable after the Registration  
Statement becomes effective.

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

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

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

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

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

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per share(*)	Proposed maximum aggregate offering price(*)	Proceeds to the Company	Amount of registration fee
Common Stock, par value \$0.01	95,000	\$2.25	\$212,750.00	-0-	\$63.06
Total					\$63.06

\* ESTIMATED SOLELY FOR THE PURPOSE OF CALCULATING THE REGISTRATION FEE. CALCULATED PURSUANT TO RULE 457(G) AND BASED ON THE AVERAGE BID AND ASKED PRICE OF THE COMPANY'S COMMON STOCK ON APRIL 1, 1998.

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVENESS DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OF 1933, AS AMENDED, OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE SECURITIES AND EXCHANGE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.

RICK'S CABARET INTERNATIONAL, INC.

Cross-Reference Sheet  
showing location in the Prospectus of  
Information Required by Items of Form S-3

FORM S-3 ITEM NUMBER AND CAPTION	LOCATION IN PROSPECTUS
1. Front of Registration Statement and Outside Front Cover of Prospectus	Outside Front Cover Page of Prospectus
2. Inside Front Cover and Outside Back Cover Pages of Prospectus	Inside Front Cover and Outside Back Cover Pages of Prospectus
3. Summary Information and Risk Factors	The Company; Risk Factors
4. Use of Proceeds	Use of Proceeds
5. Determination of Offering Price	Outside Front Cover Page; Use of Proceeds
6. Dilution	*
7. Selling Stockholders	Selling Stockholder
8. Plan of Distribution Factors; Plan of Distribution	Outside Front Cover Page; Risk
9. Description of Securities to be Registered	*
10. Interest of Named Experts and Counsel	Legal Matters
11. Material Changes	Recent Events
12. Incorporation by Reference of Certain Information	Documents Incorporated by Reference
13. Disclosure of Commission Position on Indemnification for Securities Act Liabilities	Limitation on Director's Liability; Indemnification

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(\*) None or Not Applicable

INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION OR AMENDMENT. A REGISTRATION STATEMENT RELATING TO THESE SECURITIES HAS BEEN FILED WITH THE SECURITIES AND EXCHANGE COMMISSION. THESE SECURITIES MAY NOT BE SOLD NOR MAY OFFERS TO BUY BE ACCEPTED PRIOR TO THE TIME THE REGISTRATION STATEMENT BECOMES EFFECTIVE. THIS PROSPECTUS SHALL NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY NOR SHALL THERE BE ANY SALE OF THESE SECURITIES IN ANY STATE IN WHICH SUCH OFFER, SOLICITATION OR SALE WOULD BE UNLAWFUL PRIOR TO REGISTRATION OR QUALIFICATION UNDER THE SECURITIES LAWS OF ANY SUCH STATE.

**SUBJECT TO COMPLETION, DATED APRIL 3, 1998**

**RICK'S CABARET INTERNATIONAL, INC.**

**95,000 SHARES OF COMMON STOCK**

This Prospectus relates to the resale of 95,000 shares of common stock, par value \$0.01 per share (the "Common Stock"), of Rick's Cabaret International, Inc. (the "Company") which may be offered and sold from time to time (the "Stockholder Shares") by a certain security holder of the Company (the "Selling Stockholder"). The Selling Stockholder may from time to time sell all or any portion of the Common Stock in the over-the-counter market, on any regional or national securities exchange on which the Common Stock is listed or traded, in negotiated transactions or otherwise, at prices then prevailing or related to the then current market price or at negotiated prices. A current Prospectus must be in effect at the time of the sale of the shares of Common Stock to which this Prospectus relates. The Common Stock may be sold directly or through broker dealers, or in a distribution by one or more underwriters on a firm commitment or a best efforts basis. The Selling Stockholder and any broker-dealer who participates in the distribution of the Common Stock may be deemed to be Underwriters ("Underwriters") within the meaning of the Securities Act of 1933, as amended (the "Act"). Any commission received by any broker-dealer and any profit on resale of Common Stock purchased by them may be deemed to be underwriting commission under the Act. The Company will not receive any proceeds upon the sale of the Common Stock offered hereby.

The Company's Common Stock and Warrants are quoted on the National Association of Securities Dealer's NASDAQ Small Cap Market automated quotation system under the symbol "RICK" and "RICKW", respectively. On March 26, 1998, the last closing bid price of the Company's Common Stock as reported by the National Association of Securities Dealer's NASDAQ Small Cap Market was \$2.25 per share bid.

FOR A DISCUSSION OF CERTAIN FACTORS THAT SHOULD BE CONSIDERED IN CONNECTION WITH AN INVESTMENT IN THE COMMON STOCK, SEE THE "RISK FACTORS" SECTION OF THIS PROSPECTUS BEGINNING ON PAGE 4.

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

**The Date of this Prospectus is April \_\_, 1998**

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS IN CONNECTION WITH THIS OFFERING OTHER THAN THOSE CONTAINED IN THIS PROSPECTUS AND, IF GIVEN OR MADE, ANY SUCH INFORMATION OR REPRESENTATION MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE COMPANY OR ANY OTHER PERSON. NEITHER THE DELIVERY OF THIS PROSPECTUS NOR ANY SALE MADE HEREUNDER SHALL, UNDER ANY CIRCUMSTANCE, CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE COMPANY OR ITS SUBSIDIARIES SINCE THE DATE HEREOF. THIS PROSPECTUS DOES NOT CONSTITUTE AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO BUY ANY SECURITIES OTHER THAN THOSE TO WHICH IT RELATES OR AN OFFER TO ANY PERSON IN ANY STATE WHERE SUCH OFFER WOULD BE UNLAWFUL.

**TABLE OF CONTENTS**

SECTION PAGE

AVAILABLE INFORMATION..... 3  
DOCUMENTS INCORPORATED BY REFERENCE..... 3  
THE COMPANY..... 4  
RISK FACTORS..... 4  
RECENT EVENTS..... 11  
USE OF PROCEEDS..... 12  
PLAN OF DISTRIBUTION..... 12  
SELLING STOCKHOLDER..... 13  
LIMITATION ON DIRECTOR'S LIABILITY; INDEMNIFICATION..... 14  
LEGAL MATTERS..... 14  
EXPERTS..... 14

## AVAILABLE INFORMATION

The Company is subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and in accordance therewith files reports, proxy statements and other information with the Commission. The Company will provide without charge to each person who receives a copy of this Prospectus, upon written or oral request, a copy of any information that is incorporated by reference in this Prospectus (not including exhibits to the information that is incorporated by reference unless the exhibits are themselves specifically incorporated by reference). Such request should be directed to Rick's Cabaret International, Inc., Attention of Robert L. Watters, 3113 Bering Drive, Houston, Texas 77057, tel. (713) 785-0444.

The Company has filed with the Commission a Registration Statement on Form S-3 under the Act with respect to the securities offered by this Prospectus. This Prospectus does not contain all of the information set forth in the Registration Statement, certain parts of which are omitted in accordance with the rules and regulations of the Commission. For further information with respect to the Company and this offering, reference is made to the Registration Statement, including the exhibits filed therewith, as well as such reports, proxy statements and other information filed with the Commission, which may be inspected without charge at the public reference facilities maintained by the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such material may also be obtained from the Public Reference Section of the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549, at prescribed rates. The Commission maintains a Web site on the Internet that contains reports, proxy and information statements and other information regarding issuers that file electronically with the Commission. The address of the site is <http://www.sec.gov>. Visitors to the site may access such information by searching the EDGAR data base on the site.

## DOCUMENTS INCORPORATED BY REFERENCE

The Company hereby incorporates by reference in this Prospectus (i) the Company's Annual Report on Form 10-KSB for the fiscal year ended September 30, 1997; and, (ii) the Company's Quarterly Report on Form 10-QSB for the fiscal quarter ended December 31, 1997. All other reports filed by the Company pursuant to Section 13(a) or 15(d) of the Exchange Act since September 30, 1997, are hereby incorporated herein by reference.

All documents subsequently filed by the Company pursuant to Section 13(a), 13(c), 14, or 15(d) of the Exchange Act, prior to the termination of this offering, shall be deemed to be incorporated by reference into this Prospectus. Any statement contained in a document incorporated or deemed to be incorporated by reference in this Prospectus shall be deemed to be modified or superseded for purposes of this Prospectus to the extent that a statement contained in this Prospectus or any other subsequently filed document which also is or is deemed to be incorporated by reference modifies or replaces such statement.

## THE COMPANY

The Company was organized in 1994 by Robert L. Watters to acquire all of the outstanding capital stock of Trumps, Inc. ("Trumps"), a Texas corporation formed in 1982, from Robert L. Watters, its sole shareholder. Since 1983, Trumps has operated Rick's Cabaret ("Rick's"), a premiere adult nightclub offering topless entertainment in Houston, Texas. Rick's Cabaret, which caters primarily to businessmen, has developed a clientele base which includes professionals, business executives and other individuals who tend to entertain more frequently than the average person and who tend to have greater disposable income. From its inception, the Company's objective was to provide a first-class entertainment environment for the business consumer. To achieve this goal and reach its target market, Rick's created an attractive, yet discreet environment, complimented by a first-class bar and restaurant operation conducive to attracting businessmen and out-of-town convention clientele.

In September, 1995, the Company acquired all of the capital stock of Tantric Enterprises, Inc., Tantra Dance, Inc., and Tantra Parking, Inc. (collectively "Tantra") from Mr. Watters. The Tantra companies own and operate Tantra, a non-sexually oriented discotheque and billiard club in Houston, Texas.

In February, 1996, the Company formed RCI Entertainment, Louisiana, Inc., a Louisiana corporation, for the purpose of administering, operating, managing and leasing its new location at 315 Bourbon Street, New Orleans, Louisiana.

In December 1996, the Company acquired the land and building at its primary Houston, Texas location in connection with the settlement of certain litigation, thereby allowing the Company to remain at the location.

In January 1997, the Company formed RCI Entertainment (Minnesota), Inc., a Minnesota corporation, for the purpose of acquiring, administering, operating and managing its new location in Minneapolis, Minnesota. The acquisition of the Minneapolis facility was completed in December 1997. The Company recently opened its Minneapolis cabaret.

## RISK FACTORS

THE COMMON STOCK OFFERED HEREBY IS SPECULATIVE AND INVOLVES A HIGH DEGREE OF RISK. IN ADDITION TO THE OTHER INFORMATION SET FORTH IN THIS PROSPECTUS, EACH PROSPECTIVE INVESTOR SHOULD CAREFULLY CONSIDER THE FOLLOWING

RISK FACTORS BEFORE MAKING AN INVESTMENT DECISION.

### RECENT LOSSES AND ACCUMULATED DEFICIT

The Company incurred losses for the fiscal year ending September 30, 1997 of \$(1,293,330) and an accumulated deficit of \$(1,802,718) at September 30, 1997. For the first quarter of fiscal 1998 ended December 31, 1997, the Company generated a net profit of \$35,553. Revenues increased during the fiscal year ending September 30, 1997 to \$6,277,579 from \$4,630,298 during the previous fiscal year. During the first quarter of fiscal 1998, revenues increased to \$1,668,426 from \$1,082,615 from the same quarter during the previous fiscal year ended September 30, 1997. Losses have been largely attributable to operations and the increase in costs associated with acquisition activities and the opening of the New Orleans location and the Minneapolis location. The Company has experienced decreased sales at its Houston location as a result of the current level of competition and to the public perception of a recently enacted City of Houston, Texas Ordinance (the "Ordinance"). Management believes that with the opening of the Minneapolis location and recent cost reduction programs put into place during fiscal 1997, that the losses incurred during the previous fiscal year will likely be mitigated. See Risk Factors -- Necessary Permits -- Recent Houston City Ordinance and Recent Events.



## NECESSARY PERMITS -- RECENT HOUSTON CITY ORDINANCE

In addition to various regulatory requirements affecting the sale of alcoholic beverages in the cities in which it operates, the location of a topless cabaret is sometimes subject to a city ordinance. Accordingly, Rick's is subject to such sexually oriented business ordinances of cities in which it operates. Such ordinances deal generally with distance from schools, churches, and other sexually oriented businesses and contain restrictions based on the percentage of residences within the immediate vicinity of the sexually oriented business, as well as the conduct of business within a club.

In January 1997, the City Council of the City of Houston passed a comprehensive new Ordinance regulating the location of and the conduct within Sexually Oriented Businesses. The new Ordinance established new distances that Sexually Oriented Businesses may be located to schools, churches, playgrounds and other sexually oriented businesses. There were no provisions in the Ordinance exempting previously permitted sexually oriented businesses from the effect of the new Ordinance. In 1997, the Company was informed that Rick's Cabaret at its location at 3113 Bering Drive failed to meet the requirements of the Ordinance and accordingly the renewal of the Company's Business License at that location was denied.

The Ordinance provided that a business which was denied a renewal of its operating permit due to changes in distance requirements under the Ordinance would be entitled to continue in operation for a period of time (the "Amortization Period") if the owner were unable to recoup, by the effective date of the Ordinance, its investment in the business that was incurred through the date of the passage and approval of the Ordinance.

The Company filed a written request with the City of Houston requesting an extension of time during which the Company could continue operations at its original location under the Amortization Period provisions of the Ordinance since the Company was unable to recoup its investment prior to the effective date of the Ordinance. An administrative hearing (the "Hearing") was held by the City of Houston to determine the appropriate Amortization Period to be granted to the Company. At the Hearing, the Company was granted an amortization period through July 1998. The Company has the right to appeal any decision of the Hearing official to the district court in the State of Texas.

In May, 1997, the City of Houston agreed to defer implementation of the Ordinance until the constitutionality of the entire Ordinance was decided by court trial. In February 1998 the U.S. District Court for the Southern District of Texas, Houston, Division, struck down certain provisions of the Ordinance, including the provision mandating a 1,500 foot distance between a club and schools, churches and other sexually oriented business, leaving intact the provision of the 750 foot distance as it existed in the prior Houston, Texas Ordinance.

There are other provisions in the Houston, Texas Ordinance, such as provisions governing the level of lighting in a sexually oriented business, the distance between a customer and dancer while the dancer is performing in a state of undress and provisions regarding the licensing of dancers that were upheld which may be detrimental to the business by the Company. The Company, in concert with other sexually oriented businesses, is appealing these aspects of the Houston, Texas Ordinance.

It is unknown if the City of Houston will appeal the court's rulings. In the event that the City of Houston is successful in an appeal, the Company's Houston location could be out of compliance. Such an outcome could have an adverse impact on the Company's future.

On April 1, 1998, the City of Houston began enforcing certain portions of the Ordinance, including the distance requirement between a customer and a dancer while dancing, and the requirement that dancers be licensed. The City of Houston's enforcement of the recently implemented provisions of the Ordinance could have an adverse impact on the Rick's location in Houston, Texas. The current requirement of a three foot distance between a dancer and a customer could reduce customer satisfaction and could result in fewer customers at the Houston location. The requirement that a dancer be licensed may result in fewer dancers working, which could have an adverse impact on the Houston location. It is unknown what impact the enforcement of the Ordinance may have on the Company's Houston location.

A dance hall permit is required for the operation of a discotheque in the city of Houston. The dance hall permit is not a discretionary permit, but must be granted by the city if the provisions of the applicable ordinance are satisfied. A dance hall permit may be revoked or renewal may be refused if certain criminal activities occur on the premises or if the person listed as the applicant has committed certain named offenses. The loss of the dance hall permit would have a material adverse effect on Rick's business, financial condition and results of operations.

## **RISK OF ADULT NIGHTCLUB OPERATIONS AND DINNER THEATER CONCEPT**

Historically, the adult entertainment, restaurant and bar industry has been an extremely volatile industry. The industry tends to be extremely sensitive to the general local economy, in that when economic conditions are prosperous, entertainment industry revenues increase, and when economic conditions are unfavorable, entertainment industry revenues decline. Coupled with this economic sensitivity is the trendy personal preferences of the customers who frequent adult cabarets. The Company continuously monitors trends in its customers' tastes and entertainment preferences so that, if necessary, it can make appropriate changes which will allow it to remain one of the premiere adult cabarets. However, any significant decline in general corporate conditions or uncertainties regarding future economic prospects that affect consumer spending could have a material adverse effect on the Company's business. In addition, Rick's has historically catered to a clientele base from the upper end of the market. Accordingly, further reductions in the amounts of entertainment expenses allowed as deductions from income under the Internal Revenue Code of 1954, as amended, could adversely affect sales to customers dependent upon corporate expense accounts. The Company continues to plan for the opening of a cabaret style dinner theater on the second floor of the New Orleans location. Completion of the second floor facility is currently contingent upon obtaining additional construction cost financing. Uncertainties relating to the opening of the facility relate to the availability and suitability of financing, the timing of the opening and availability of talent, and ultimately the overall market acceptance of this concept.

## **FINANCIAL CONTROLS**

A significant part of the revenues earned by the Company through its adult nightclub operations will be collected in cash by full and part-time employees. Comprehensive financial controls are required to minimize the potential loss of revenue through theft or misappropriation of cash. To the extent that these controls are not structured or executed properly, significant cash revenues could be lost and profitability of the Company impaired. The Company believes that it has implemented significant cash controls, including separating management personnel from actually handling cash and utilizing a combination of accounting and physical inventory control devices to deter theft and to ensure a high level of security within its accounting practices and procedures.

## **COMPETITION**

The adult topless club entertainment business is highly competitive with respect to price, service and location, as well as the professionalism of the entertainment. Rick's competes with a number of locally-owned adult cabarets in each of the cities where its clubs are located, some of whose names may enjoy recognition that equals that of Rick's. Although the Company believes that it is well-positioned to compete successfully, there can be no assurance that Rick's will be able to maintain its high level of name recognition and prestige within the marketplace.

## **DEPENDENCE ON AND AVAILABILITY OF MANAGEMENT; MANAGEMENT OF GROWTH**

The success of the Company is substantially dependent upon the time, talent, and experience of Robert Watters, its President and Chief Executive Officer. The Company has entered into a three-year employment agreement with Mr. Watters which extends to December 31, 2000. The loss of the services of Mr. Watters would have a material adverse impact on the Company and its business. In the event of Mr. Watters unavailability or in the event that he should become temporarily disabled, the Company believes that it presently has in place management systems and controls which are sufficiently strong to enable it to run efficiently and effectively until Mr. Watters' return or until a replacement could be found. No assurance can be given, however, that a replacement for Mr. Watters could be located in the event of his unavailability. Further, in order for the Company to continue to expand its business operations, it must continue to improve and expand the level of expertise of its personnel and must attract, train and manage qualified managers and employees to oversee and manage the expanded operations. The Company's practice of training management without prior adult topless club experience could result in a delay in the Company's anticipated growth plans due to the time required to attract and train such qualified managers and employees.

## **KEY EMPLOYEES**

The Company's success depends on maintaining a high quality of female entertainers and waitresses. Competition for topless entertainers in the adult entertainment business is intense. The lack of availability of quality, personable, attractive entertainers or the Company's inability to attract and retain other key employees, such as kitchen personnel and bartenders, could adversely impact the business of the Company.

## **ABILITY TO MANAGE GROWTH**

It is the intention of the Company to expand its existing business operations by opening additional topless nightclubs in other metropolitan areas under the trade name "Rick's Cabaret." The opening of additional topless nightclubs will subject the Company to a variety of risks associated with rapidly growing companies. In particular, the Company's growth may place a significant strain on its accounting systems and internal controls and personal overview of its day-to-day operations. Although management intends to ensure that its internal controls remain adequate to meet the demands of further growth, there can be no assurance that its systems, controls or personnel will be sufficient to meet these demands. Inadequacies in these areas could have a material adverse effect on Rick's business, financial condition and results of operations. The Company has recruited its management staff exclusively from outside of the topless industry in the belief that management which has not been exposed to operating practices which the Company believes prevalent elsewhere in the topless industry and with diverse management backgrounds will produce a management team that operates with a high level of integrity. This practice of training management without adult nightclub experience may cause the Company to experience a shortage of qualified management necessary to fulfill its anticipated growth plans due to the additional time required to train such personnel.

## **PERMITS RELATING TO THE SALE OF ALCOHOL**

Rick's derives a significant portion of its revenues from the sale of alcoholic beverages. In Texas, the authority to issue a permit to sell alcoholic beverages is governed by the Texas Alcoholic Beverage Commission (the "TABC"), which has the authority, in its discretion, to issue the appropriate permits. Rick's presently holds a Mixed Beverage Permit and a Late Hours Permit issued by the State of Texas and permits to sell alcohol issued by the States of Louisiana and Minnesota (the "Permits"). These Permits are subject to annual renewal, provided Rick's has complied with all rules and regulations governing the permits. Renewal of a permit may be subject to protest. In the event of a protest, the regulatory authority may hold a hearing at which time the views of interested parties are expressed. The liquor license authorities have the authority after such hearing not to issue a renewal of the protested alcoholic beverage permit. While Rick's has never been subject to a protest hearing against the renewal of its Permits, there can be no assurance that such a protest could not be made in the future, nor can there be any assurance that the Permits would be granted in the event such a protest was made. Other states may have similar laws which may limit the availability of a permit to sell alcoholic beverages or which may provide for suspension or revocation of a permit to sell alcoholic beverages in certain circumstances. The temporary or permanent suspension or revocations of either of the Permits or the inability to obtain permits in areas of expansion would have a material adverse effect on the revenues, financial condition and results of operations of the Company.

## **STATUS OF ENTERTAINERS AS INDEPENDENT CONTRACTORS**

The Company believes its entertainers to be independent contractors and not employees for federal income tax purposes and that the entertainers should be treated as self-employed independent contractors under the income tax withholding provisions of the Internal Revenue Code and under the Federal Insurance Contributions Act and the Federal Unemployment Tax Act. In addition, the Company believes the entertainers are independent contractors for purposes of regulations administered by the United States Department of Labor. However, the status of the entertainers as independent contractors is not free from doubt. The Company has sought neither a ruling from either the Internal Revenue Service or the Department of Labor nor an opinion of counsel as to the status of its entertainers as independent contractors. After consultation with counsel, the Company does not believe that it could obtain an opinion on this issue. Moreover, the Company believes that any such opinion, if obtained, would be of very limited value, given the inherently factual nature of the issue. To the extent that a determination were made that the entertainers are not independent contractors, but rather are employees for tax or labor purposes, and a similar determination were not made as to other adult cabarets, the Company could be at a competitive disadvantage with other adult cabarets. Moreover, such a determination could result in the imposition of penalties against the Company for its prior treatment, the effect of which could be material.

## **EXISTING LITIGATION**

The Company and Mr. Watters are presently involved in certain litigation. In *DALLAS J. FONTENOT V. TRUMPS, INC. AND ROBERT L. WATTERS*, Cause No. 94-057144 in the 127th District Court of Harris County, Texas (the "Fontenot Lawsuit"), Mr. Fontenot sued the Company and Mr. Watters for alleged breaches of an Agreement entered into in April, 1993 among Mr. Fontenot, the Company and Mr. Watters. Mr. Fontenot alleges that Mr. Watters and the Company have breached this Agreement, but does not indicate the manner in which the breach has occurred. The Company believes that it has fully complied with its obligations under this Agreement. In March, 1998, each of the parties agreed to dismiss this litigation with prejudice. The Settlement documents have been prepared and are in the process of being executed by the parties.

## **UNINSURED RISKS**

The Company maintains insurance in amounts it considers adequate for personal injury and property damage to which the business of the Company may be subject. As of September 1996, the Company maintains personal injury liquor liability insurance, however, there can be no assurance that the Company may not be exposed to potential liabilities in excess of the coverage provided by insurance, which liabilities may be imposed pursuant to the Texas "Dram Shop" statute or similar "Dram Shop" statutes or common law theories of liability in other states where the Company may expand. The Texas "Dram Shop" statute provides a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to such person if it was apparent to the server that the individual being sold, served or provided with an alcoholic beverage was obviously intoxicated to the extent that he presented a clear danger to himself and others. An employer is not liable for the actions of its employee who overserves if (i) the employer requires its employees to attend a seller training program approved by the TABC; (ii) the employee has actually attended such a training program; and (iii) the employer has not directly or indirectly encouraged the employee to violate the law. It is the policy of Rick's to require that all servers of alcohol working at Rick's be certified as servers under a training program approved by the TABC, which certification gives statutory immunity to the sellers of alcohol from damage caused to third parties by those who have consumed alcoholic beverages at such establishment pursuant to the Texas Alcoholic Beverage Code. There can be no assurance, however, that uninsured liabilities may not arise which could have a material adverse effect on the Company.

## **CONTROL BY MANAGEMENT**

The Chief Executive Officer and Chairman of the Board of the Company owns approximately 43% of the outstanding Common Stock of the Company. As a result, management will be able to influence the election of directors and otherwise influence the affairs of the Company for the foreseeable future.

## **LIMITATIONS ON PROTECTION OF SERVICE MARKS**

Rights of the Company to the tradenames "Rick's" and "Rick's Cabaret", are established under the common law, based upon the Company's substantial and continuous use of these trademarks in interstate commerce since at least as early as 1987. "RICK'S AND STARS DESIGN" and "RICK'S CABARET" logos are registered through service mark registrations issued by the United States Patent and Trademark Office ("PTO").

There can be no assurance that these steps taken by the Company to protect its Service Marks will be adequate to deter misappropriation of its protected intellectual property rights. Litigation may be necessary in the future to protect the Company's rights from infringement, which may be costly and time consuming. The loss of the intellectual property rights owned or claimed by the Company could have a material adverse affect on the Company.

## **POSSIBLE VOLATILITY OF COMMON STOCK PRICE**

The market price of the Common Stock of the Company may be highly volatile, as has been the case with the securities of many other small capitalization companies. Additionally, in recent years, the securities markets have experienced a high level of price and volume volatility and the market prices of securities for many companies, particularly small capitalization companies, have experienced wide fluctuations which have not necessarily been related to the operating performances or underlying asset values of such companies. Securities of issuers having relatively limited capitalization or securities recently issued in a public offering are particularly susceptible to change based on short-term trading strategies of certain investors.

## **NO CASH DIVIDENDS**

The Company has never paid cash dividends on its Common Stock and the Board of Directors does not anticipate paying cash dividends in the foreseeable future. It currently intends to retain future earnings to finance the growth of its business.

## **ANTI-TAKEOVER EFFECTS OF ISSUANCE OF PREFERRED STOCK**

The Board of Directors has the authority to issue up to 1,000,000 shares of Preferred Stock, \$.10 par value per share, in one or more series, to fix the number of shares constituting any such series, and to fix the rights and preferences of the shares constituting any series, without any further vote or action by the stockholders. The issuance of Preferred Stock by the Board of Directors could adversely affect the rights of the holders of Common Stock and could prevent holders of common stock from receiving a potential premium for their stock. For example, such issuance could result in a class of securities outstanding that would have preferences with respect to voting rights and dividends and in liquidation over the Common Stock, and could (upon conversion or otherwise) enjoy all of the rights appurtenant to Common Stock. The Board's authority to issue Preferred Stock could discourage potential takeover attempts and could delay or prevent a change in control of the Company through merger, tender offer, proxy contest or otherwise by making such attempts more difficult to achieve or more costly. There are no issued and outstanding shares of Preferred Stock; there are no agreements or understandings for the issuance of Preferred Stock, and the Board of Directors has no present intention to issue Preferred Stock.

## **LIMITATION ON DIRECTOR LIABILITY**

The Company's Articles of Incorporation provide, as permitted by governing Texas law, that a director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, with certain exceptions. These provisions may discourage stockholders from bringing suit against a director for breach of fiduciary duty and may reduce the likelihood of derivative litigation brought by stockholders on behalf of the Company against a director. See, **LIMITATION ON DIRECTORS' LIABILITY; INDEMNIFICATION**.

## **FORWARD-LOOKING STATEMENTS**

This statement is being included in connection with the safe harbor provision of the Private Securities Litigation Reform Act. This Prospectus contains forward-looking statements. Such statements are based upon management's current expectations, beliefs, and assumptions about future events, and are other than statements of historical fact, and involve a number of risks and uncertainties. In addition to those factors discussed herein, important factors that could cause actual results to differ materially from those in forward-looking statements are, among others, the impact and implementation of the sexually oriented business Ordinance of the City of Houston, the results of the Company's Minneapolis location, the Company's expansion efforts, market acceptance for the Company's services and products, competition, and the availability of financing.

## RECENT EVENTS

### ACQUISITION OF MINNEAPOLIS CABARET

In December 1997, the Company completed its acquisition of real estate located at 300 South and 3rd Street in downtown Minneapolis, Minnesota consisting of land and a 14,000 square foot cabaret facility and the assets of "Buns & Roses", an adult entertainment business that has operated there for two years. The Company opened its new cabaret in March 1998. The Company offers topless adult entertainment, in a similar format of and bearing the name "Rick's Cabaret." The Cabaret is located at the intersection of two major downtown streets and is located within walking distance of both the Metrodome, home to the Minnesota Vikings and the Twins, and the Target Center, home to the Minnesota Timberwolves. The City of Minneapolis has approved and granted a liquor license to Rick's Cabaret which will permit the operation of a topless cabaret as well as the ability to serve alcohol at the Location. The City of Minneapolis was chosen as a site for expansion by the Company because of the City's excellent demographic characteristics and vibrant nature of its downtown entertainment district.

### RECENT DEVELOPMENTS IN HOUSTON, TEXAS ORDINANCE

In January 1997, the City Council of the City of Houston passed a comprehensive new Ordinance regulating the location of and the conduct within Sexually Oriented Businesses. The new Ordinance established new distances that Sexually Oriented Businesses may be located to schools, churches, playgrounds and other sexually oriented businesses. There were no provisions in the Ordinance exempting previously permitted sexually oriented businesses from the effect of the new Ordinance. In 1997, the Company was informed that Rick's Cabaret at its location at 3113 Bering Drive failed to meet the requirements of the Ordinance and accordingly the renewal of the Company's Business License at that location was denied.

The Ordinance provided that a business which was denied a renewal of its operating permit due to changes in distance requirements under the Ordinance would be entitled to continue in operation for a period of time (the "Amortization Period") if the owner were unable to recoup, by the effective date of the Ordinance, its investment in the business that was incurred through the date of the passage and approval of the Ordinance.

The Company filed a written request with the City of Houston requesting an extension of time during which the Company could continue operations at its original location under the Amortization Period provisions of the Ordinance since the Company was unable to recoup its investment prior to the effective date of the Ordinance. An administrative hearing (the "Hearing") was held by the City of Houston to determine the appropriate Amortization Period to be granted to the Company. At the Hearing, the Company was granted an amortization period through July 1998. The Company has the right to appeal any decision of the Hearing official to the district court in the State of Texas.

In May, 1997, the City of Houston agreed to defer implementation of the Ordinance until the constitutionality of the entire Ordinance was decided by court trial. In February 1998 the U.S. District Court for the Southern District of Texas, Houston, Division, struck down certain provisions of the Ordinance, including the provision mandating a 1,500 foot distance between a club and schools, churches and other sexually oriented business, leaving intact the provision of the 750 foot distance as it existed in the prior Houston, Texas Ordinance.

There are other provisions in the Houston, Texas Ordinance, such as provisions governing the level of lighting in a sexually oriented business, the distance between a customer and dancer while the dancer is performing in a state of undress and provisions regarding the licensing of dancers that were upheld which may be detrimental to the business by the Company. The Company, in concert with other sexually oriented businesses, is appealing these aspects of the Houston, Texas Ordinance.

It is unknown if the City of Houston will appeal the court's rulings. In the event that the City of Houston is successful in an appeal, the Company's Houston location could be out of compliance. Such an outcome could have an adverse impact on the Company's future.

On April 1, 1998, the City of Houston began enforcing certain portions of the Ordinance, including the distance requirement between a customer and a dancer while dancing, and the requirement that dancers be licensed. The City of Houston's enforcement of the recently implemented provisions of the Ordinance could have an adverse impact on the Rick's location in Houston, Texas. The current requirement of a three foot distance between a dancer and a customer could reduce customer satisfaction and could result in fewer customers at the Houston location. The requirement that a dancer be licensed may result in fewer dancers working, which could have an adverse impact on the Houston location. It is unknown what impact the enforcement of the Ordinance may have on the Company's Houston location.

#### **USE OF PROCEEDS**

The Company will not receive any proceeds upon the resale of the Common Stock by the Selling Stockholder. The Company is required to pay the costs associated with this Offering, which it estimates to be approximately \$7,500. The Selling Stockholder will not pay any of the costs of this Offering.

#### **PLAN OF DISTRIBUTION**

The Selling Stockholder may, from time to time, sell all or a portion of his shares in transactions (which may include block transactions) in the over-the-counter market, on any national or regional securities exchange in which the Common Stock is listed or traded, in negotiated transactions or otherwise, at prices then prevailing or related to the then current market price or at negotiated prices. Resales by the purchasers of such shares may be made in the same manner.

The Selling Stockholder may effect such transactions by selling his securities directly to purchasers, through broker-dealers acting as agents for the Selling Stockholder or to broker-dealers who may purchase shares as principals and thereafter sell the securities from time to time in the over-the-counter market, in negotiated transactions or otherwise. Such broker-dealers, if any, may receive compensation in the form of discounts, concessions or commissions from the Selling Stockholder and/or the purchasers for whom such broker-dealers may act as agents or to whom they may sell as principals (which compensation as to a particular broker-dealer may be in excess of customary commissions).

If the Company is notified by the Selling Stockholder that any material arrangement has been entered into with a broker-dealer for the sale of the Common Stock, the Company would be required to amend the Registration Statement of which this Prospectus is a part and file a Prospectus Supplement to describe the agreements between the Selling Stockholder and such broker-dealer relating to the distribution.



The Selling Stockholder and any broker-dealers participating in the distribution of the Common Stock covered by this Prospectus may be deemed to be "underwriters" (within the meaning of Section 2(11) of the Act). Any commissions received by them, as well as any proceeds from any sales as a principal by them, may be deemed to be underwriting discounts and commissions under the Act.

The Company will pay certain costs and expenses incurred in connection with the registration of the Stockholder Shares under the Act. The Company will not, however, pay any commissions or any other fees in connection with the sale of the Common Stock. There is no assurance that the Selling Stockholder will sell any or all of the Common Stock.

### SELLING STOCKHOLDER

The following table sets forth the name of the Selling Stockholder, the number of shares of Common Stock offered by the Selling Stockholder, the number of shares of Common Stock to be owned by the Selling Stockholder if all shares were to be sold in the Offering and the percentage of the Company's outstanding Common Stock that will be owned by the Selling Stockholder if all shares are sold in the offering. The Selling Stockholder may offer all or a portion of the shares for resale from time to time.

Selling Stockholder (1) -----	Shares Owned Before Offering -----	Shares Offered For Sale -----	Shares Owned After Offering If Shares Sold -----	Percentage Owned After All Offering If All Shares Sold -----
Larry Holmberg	95,000	95,000	-0-	-0-%

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(1) Mr. Holmberg acquired his shares from the Company in a transaction in which Mr. Holmberg sold to the Company certain real estate and related assets located in Minneapolis, Minnesota in December 1997. Mr.

Holmberg has not and does not hold any position or office with the Company or any of its affiliates.

## **LIMITATION ON DIRECTOR'S LIABILITY; INDEMNIFICATION**

Texas law authorizes corporations to limit or eliminate the personal liability of directors to corporations and their stockholders for monetary damages for breach of directors' fiduciary duty of care. The Articles of the Company limit the liability of directors of the Company (in their capacity as directors but not in their capacity as officers) to the Company or its stockholders to the fullest extent permitted by Texas law. Specifically, directors of the Company will not be personally liable for monetary damages for breach of a director's fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Article 2.41 under the Texas Business Corporation Act ("TBCA"), or (iv) for any transactions from which the director derived an improper personal benefit, whether or not the benefit resulted from an action taken in the person's official capacity. Section 2.41 of the TBCA relates to directors' liability for unlawful dividends and stock issuances.

The inclusion of this provision in the Articles may have the effect of reducing the likelihood of derivative litigation against directors, and may discourage or deter stockholders or management from bringing a lawsuit against directors for breach of their duty of care, even though such an action, if successful, might otherwise have benefited the Company and its stockholders.

The Company's Articles provide for the indemnification of its executive officers and directors, and the advancement to them of expenses in connection with any proceedings and claims, to the fullest extent permitted by the TBCA law. The Articles include related provisions meant to facilitate the indemnitees' receipt of such benefits. These provisions cover, among other things: (i) specification of the method of determining entitlement to indemnification and the selection of independent counsel that will in some cases make such determination, (ii) specification of certain time periods by which certain payments or determinations must be made and actions must be taken, and (iii) the establishment of certain presumptions in favor of an indemnitee.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 (the "Act") may be permitted to directors, officers or controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that, in the opinion of the Securities and Exchange Commission, such indemnification is against public policy as expressed in the Act and is therefore unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by a small business issuer of expenses incurred or paid by a director, officer or controlling person of the small business issuer in the successful defense of any action, suit or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the small business issuer will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

## **LEGAL MATTERS**

The validity of the Common Stock offered hereby will be passed on for the Company by Axelrod Smith & Kirshbaum of Houston, Texas.

## **EXPERTS**

The consolidated balance sheets at September 30, 1997 and 1996 and the related consolidated statements of operations, changes in stockholders' equity and cash flows for the years ended September 30, 1997 and 1996 of Rick's Cabaret International, Inc. incorporated by reference into this Prospectus and Registration Statement have been audited by Jackson & Rhodes P.C., independent auditors, as set forth in their report, and are incorporated by reference in reliance upon such report, given upon the authority of such firm as experts in accounting and auditing.

## PART II

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

The following table sets forth the estimated expenses to be incurred in connection with the distribution of the securities being registered. The expenses shall be paid by the Company.

SEC Registration Fee.....	\$63.06
Printing and Engraving Expenses.....	1,000.00
Legal Fees and Expenses.....	5,000.00
Accounting Fees and Expenses.....	500.00
Blue Sky Fees and Expenses.....	0.00
Transfer Agent Fees and Miscellaneous.....	936.94
Total.....	\$7,500.00

### ITEM 15. LIMITATION ON DIRECTOR'S LIABILITY; INDEMNIFICATION

Texas law authorizes corporations to limit or eliminate the personal liability of directors to corporations and their stockholders for monetary damages for breach of directors' fiduciary duty of care. The Articles of the Company limit the liability of directors of the Company (in their capacity as directors but not in their capacity as officers) to the Company or its stockholders to the fullest extent permitted by Texas law. Specifically, directors of the Company will not be personally liable for monetary damages for breach of a director's fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Article 2.41 under the Texas Business Corporation Act ("TBCA"), or (iv) for any transactions from which the director derived an improper personal benefit, whether or not the benefit resulted from an action taken in the person's official capacity. Section 2.41 of the TBCA relates to directors' liability for unlawful dividends and stock issuances.

The inclusion of this provision in the Articles may have the effect of reducing the likelihood of derivative litigation against directors, and may discourage or deter stockholders or management from bringing a lawsuit against directors for breach of their duty of care, even though such an action, if successful, might otherwise have benefited the Company and its stockholders.

The Company's Articles provide for the indemnification of its executive officers and directors, and the advancement to them of expenses in connection with any proceedings and claims, to the fullest extent permitted by the TBCA law. The Articles include related provisions meant to facilitate the indemnitees' receipt of such benefits. These provisions cover, among other things: (i) specification of the method of determining entitlement to indemnification and the selection of independent counsel that will in some cases make such determination, (ii) specification of certain time periods by which certain payments or determinations must be made and actions must be taken, and (iii) the establishment of certain presumptions in favor of an indemnitee.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 (the "Act") may be permitted to directors, officers or controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that, in the opinion of the Securities and Exchange Commission, such indemnification is against public policy as expressed in the Act and is therefore unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by a small business issuer of expenses incurred or paid by a director, officer or controlling person of the small business issuer in the successful defense of any action, suit or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the small business issuer will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

## ITEM 16. EXHIBITS

The following exhibits are filed as part of this Registration Statement:

- 4.1\* The Company's Articles of Incorporation, which are incorporated by reference to the Company's Form SB-2 Exhibit 3.1 as effective with the Commission on October 12, 1995.
- 4.2\* The Company's By-laws, which are incorporated by reference to the Company's Form SB-2 Exhibit 3.2 as effective with the Commission on October 12, 1995.
- 4.3\* Specimen of the Company's common stock certificate, which is incorporated by reference to the Company's Form SB-2 Exhibit 4.1 as effective with the Commission on October 12, 1995.
- 4.4\* Instruments defining the rights of security holders, which are incorporated by reference to the Company's Form SB-2 Exhibit 4.2 as effective with the Commission on October 12, 1995.
- 5.1\*\* Opinion of Axelrod, Smith & Kirshbaum
- 10.1\*\* Asset Purchase Agreement in connection with acquisition of Minneapolis facility.
- 10.2\*\* Earnest Money Contract in connection with acquisition of Minneapolis facility.
- 10.3\*\* Amendment to Asset Purchase Agreement, Amendment to Earnest Money Contract.
- 10.4\*\* Second Amendment to Asset Purchase Agreement and to Earnest Money Contract.
- 23.1\*\* Consent of Axelrod, Smith & Kirshbaum (Included in Exhibit 5.1)
- 23.2\*\* Consent of Jackson & Rhodes P.C.

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\* Previously filed, or incorporated by reference.

\*\* Filed herewith.

## ITEM 17. UNDERTAKINGS

- (a) The undersigned registrant hereby undertakes:
- (1) To file, during any period in which offer or sales are being made, a post-effective amendment to this registration statement:
    - i. To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
    - ii. To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and
    - iii. To include any additional or changed material information with respect to the plan of distribution.
  - (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
  - (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
  - (4)
    - i. That, for the purpose of determining liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4), or 497(h) under the Securities Act of 1933 shall be deemed to be part of this registration statement as of the time it was declared effective.
    - ii. That, for the purpose of determining liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(b) Insofar as indemnification for liabilities arising under the Securities Act of 1933 (the "Act") may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

## SIGNATURES

In accordance with the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements of filing on Form S-3 and authorized this registration statement to be signed on its behalf by the undersigned, in the City of Houston, State of Texas on March 30, 1998.

### RICK'S CABARET INTERNATIONAL, INC.

By: /s/ ROBERT L. WATTERS

-----  
Robert L. Watters, CHAIRMAN OF THE  
BOARD, DIRECTOR, CHIEF EXECUTIVE  
OFFICER, AND CHIEF ACCOUNTING OFFICER

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities indicated.

/s/ ROBERT L. WATTERS ----- Robert L. Watters	Chairman of the Board, Director, Chief Executive Officer, and Chief Accounting Officer	March 30, 1998
/s/ ERICH NORTON WHITE ----- Erich Norton White	Director and Executive Vice President	March 30, 1998
/s/ SCOTT C. MITCHELL ----- Scott C. Mitchell	Director	March 28, 1998

**Director**  
**Martin Sage**



**Exhibit 5.1**

**AXELROD, SMITH & KIRSHBAUM**  
**An Association of Professional Corporations**  
**ATTORNEYS AT LAW**

5300 Memorial Drive, Suite 700  
Houston, Texas 77007-8292

Robert D. Axelrod  
Paul D. Smith  
Daniel R. Kirshbaum

Telephone (713) 861-1996  
Facsimile (713) 552-0202

March 31, 1998

Robert L. Watters, President  
Rick's Cabaret International, Inc.  
3113 Bering Drive  
Houston, Texas 77057

Dear Mr. Watters:

As counsel for Rick's Cabaret International, Inc., a Texas corporation ("Company"), you have requested our firm to render this opinion in connection with the Registration Statement of the Company on Form S-3 ("Registration Statement") under the Securities Act of 1933, as amended (the "Act"), filed with the Securities and Exchange Commission relating to the resale of 95,000 shares of common stock, par value \$.01 per share (the "Common Stock") by certain security holders of the Company.

We are familiar with the Registration Statement and the registration contemplated thereby. In giving this opinion, we have reviewed the Registration Statement and such other documents and certificates of public officials and of officers of the Company with respect to the accuracy of the factual matters contained therein as we have felt necessary or appropriate in order to render the opinions expressed herein. In making our examination, we have assumed the genuineness of all signatures, the authenticity of all documents presented to us as originals, the conformity to original documents of all documents presented to us as copies thereof, and the authenticity of the original documents from which any such copies were made, which assumptions we have not independently verified.

Based upon the foregoing, we are of the opinion that:

1. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas; and
2. The shares of Common Stock to be resold are validly authorized, validly issued, fully paid and nonassessable.

We consent to the to the filing of this opinion as an exhibit to the Registration Statement and to the reference in the Registration Statement to Axelrod, Smith, & Kirshbaum under the heading "Exhibits-Opinion."

Very truly yours,

*/s/ Axelrod, Smith, & Kirshbaum*  
-----  
*Axelrod, Smith, & Kirshbaum*

**Exhibit 10.1**

**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement ("Agreement") is made this 24th day of December, 1996, by and between Amusement Center, Inc., a Minnesota corporation with its principal place of business located at 300 South 3rd Street, Minneapolis, Minnesota 55415 ("Amusement Center"), Buns & Roses II, Inc., a Minnesota corporation with its principal place of business located at 300 South 3rd Street, Minneapolis, Minnesota 55415 ("B&R II"), Larry Holmberg, an individual with his principal place of business located at 300 South 3rd Street, Minneapolis, Minnesota 55415 ("Holmberg") and Rick's Cabaret International, Inc., a Texas corporation, whose address is 3113 Bering Drive, Houston, Texas 77057 or its designees ("Buyer"). Amusement Center and B&R II are hereinafter collectively referred to as "Seller(s)".

**RECITALS:**

WHEREAS, Seller is the owner of all of the tangible and intangible assets associated or used in connection with the operation of an adult entertainment restaurant and bar known as "Buns & Roses" at 300 South 3rd Street, Minneapolis, Minnesota 55415 ("Buns & Roses"); and

WHEREAS, Holmberg is the sole stockholder of the Seller; and

WHEREAS, Holmberg owns all of the real estate upon which Buns & Roses is located, as more fully described herein, and all improvements thereon (the "Property"); and

WHEREAS, Seller desires to sell and transfer all of the assets associated or used in connection with the operation of Buns & Roses; and

WHEREAS, Holmberg desires to sell and convey the Property; and

WHEREAS, the Buyer or its designee desires to acquire all of the assets of the Seller and the Property, upon and subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein and in reliance upon the representations and warranties contained herein, the parties hereto covenant and agree as follows:

**ARTICLE I  
PURCHASE AND SALE OF ASSETS AND PROPERTY**

1.1 ASSETS OF SELLER TO BE TRANSFERRED TO BUYER. On the Closing Date (as defined in Article VI hereof), and subject to the terms and conditions set forth in this Agreement, Seller shall sell, convey, transfer and assign, or cause to be sold, conveyed, transferred and assigned to Buyer, and Buyer shall acquire all of the assets of the Seller, including but not limited to, the following assets (the "Purchased Assets"):

(i) all furniture, fixtures, equipment, appliances, machinery, computer hardware and peripherals, computer software, sound equipment, audio speakers, lighting fixtures, cash registers, video equipment, lockers and other personal property of whatever nature owned or leased by Seller in connection with the operation of Buns & Roses, including but not limited to those items more fully described on Exhibit 1.1(i) of this Agreement (the "Personal Property");

(ii) all of Seller's inventory of supplies, accessories and any and all other items of personal property of whatever nature, sold by the Seller in the operation of Buns & Roses (the "Inventory"), as more fully described in Exhibit 1.1(ii);

(iii) all supplies (other than Inventory) and other "consumable supplies" used in connection with the operation of Buns & Roses (the "Supplies"), as more fully described in Exhibit 1.1(iii);

(iv) all of Seller's right, title, and interest, as lessee, of any and all equipment leased by Seller and located at Buns & Roses (the "Leased Equipment");

(v) all right, title and interest in and to any and all trademarks, tradenames, trade dress, service marks, slogans, logos, corporate or partnership names (and any existing or possible combination or derivation of any or all of the same) and general intangibles, including, without limitation, the goodwill and intellectual property rights, associated with or used in connection with the operation or business of Buns & Roses, including all rights, title and interest in and to the following tradename and trademark "Buns & Roses" (the "Intellectual Property"), provided however that Holmberg will retain the right to use the tradename "Buns & Roses" outside the corporate city limits of Minneapolis, Minnesota;

(vi) all right, title, and interest of Seller to the use of the telephone numbers presently being used by Seller, including all rotary extensions thereto, and all advertisements in the "Yellow Pages", "City Directory" and other similar publications (the "Telephone Numbers") and after the Closing, Buyer shall assume all expenses for the Telephone Numbers and advertising; and

(vii) all of Seller's lists of suppliers, and any and all copies of books, records, papers, files, memoranda and other documents in Seller's possession relating to or compiled in connection with the operation of Buns & Roses which are requested by Buyer (the "Records").

Specifically excluded from the term "Purchased Assets" as used herein are cash equivalents, investment securities, federal income tax refunds, corporate seals, books and records relating solely to corporate governance, and any motor vehicle used for personal or family activities by any shareholder of Seller (hereinafter collectively referred to as the "Excluded Assets").

**1.2 SALE OF PROPERTY TO BUYER.** On the Closing Date, and subject to the terms and conditions set forth in this Agreement, Holmberg shall sell, convey, transfer and assign, or cause to be sold, conveyed, transferred and assigned to Buyer or its designee the Property whose address is generally known as 300 South 3rd Street, Minneapolis, Minnesota 55415 and all improvements thereon, pursuant to General Warranty Deed which shall convey good and marketable title to the Property, free and clear of all claims, liens or encumbrances. Holmberg and Buyer shall enter into an Earnest Money Contract by and between Holmberg and Buyer which shall be executed and delivered simultaneously with the execution of this Agreement, in the form attached hereto as Exhibit 1.2 ("Earnest Money Contract").

**1.3 PURCHASE PRICE.** As consideration for the Purchased Assets and the Property, Buyer shall pay, at Closing to Seller and Holmberg, the total aggregate sum of \$3,000,000.00 ("Purchase Price"), payable as follows:

(i) \$500,000.00 payable by cashier's check, certified funds or wire transfer at Closing of which \$250,000.00 shall be allocated to the purchase of the Property and \$250,000.00 shall be allocated to the purchase of the Purchased Assets; and

(ii) the remaining \$2,500,000.00 of the Purchase Price shall be paid by Buyer's execution and delivery of a Mortgage Promissory Note in the form attached hereto as Exhibit 1.3

(ii)(a) in the amount of \$500,000.00 ("Mortgage Promissory Note") and a Promissory Note in the form attached hereto as Exhibit 1.3 (ii)(b) in the amount of \$2,000,000.00 amortized over 20 years, bearing interest at the rate of nine percent (9%) per annum, payable in 119 equal monthly principal and interest installments, with a final balloon payment due on the 120th monthly installment payment ("Promissory Note"). The Mortgage Promissory Note will be secured by the First Mortgage Deed in the form attached hereto as Exhibit 1.3(ii)(c) and the Promissory Note will be secured by a Security Agreement in the form attached hereto as Exhibit 1.3(ii)(d).

**1.4 PAYMENT OF EARNEST MONEY.** Buyer shall pay, as earnest money ("Earnest Money"), upon execution and delivery of this Agreement, the sum of \$60,000.00, pursuant to the terms of the Earnest Money Contract. The Earnest Money shall be deposited with a title company mutually agreeable to the parties, as escrow agent, which Earnest Money shall be applied, subject to Closing, to the Purchase Price. In the event this Agreement is terminated and the Closing does not occur, the Earnest Money, together with any earned interest thereon, shall be delivered in the manner set forth in Article 9 hereof.

**1.5 NO ASSUMPTION OF LIABILITIES.** The Buyer shall have no obligation and shall not assume or agree to pay, perform or discharge, nor shall the Buyer be directly or indirectly responsible or obligated for, any debts, obligations, contracts or liabilities of the Seller, wherever or however incurred, except for leases assumed by Buyer, which monthly expenses shall be pro rated as of the Closing. All real and personal property taxes on the Purchased Assets and the Property will be paid in full by the Seller or Holmberg for all years prior to the Closing Date and for the year of Closing will be pro rated to the Closing Date.

**1.6 ALLOCATION OF PURCHASE PRICE.** The Purchase Price of the Purchased Assets and the Property shall be allocated among the Purchased Assets and the Property in accordance with a schedule which shall be agreed upon and signed by all of the parties hereto at or prior to the Closing Date.

**ARTICLE II  
REPRESENTATIONS AND WARRANTIES  
OF THE SELLER AND HOLMBERG**

The Seller and Holmberg, jointly and severally, represent and warrant to Buyer as follows;

**2.1 ORGANIZATION AND CAPITALIZATION OF SELLER.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Minnesota, with full power and authority and all necessary governmental and regulatory licenses, permits and authorizations to carry on the businesses in which it is engaged, to own the properties that it owns currently and will own at the Closing, and to perform its obligations under this Agreement. The authorized capital stock of Amusement Center and B&R II, each, consists of 1,000 shares of common stock, \$1.00 par value, of which 1,000 shares are validly issued and outstanding. All of such issued and outstanding shares of common stock of Seller is owned by Holmberg and are fully paid and non-assessable.

**2.2 AUTHORIZATION OF AGREEMENT.** Seller has all requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution and delivery by Seller of this Agreement and the performance by Seller of its obligations hereunder (a) have been duly and validly authorized by all requisite corporate action and (b) will not violate its charter or bylaws or any order, writ, injunction, decree, statute, rule or regulations applicable to it or any of its properties or assets, or be in conflict with, result in a breach of or constitute a default under any note, bond, indenture, mortgage, lease, license, franchise agreement or other agreement, instrument or obligation, or result in the creation or imposition of any lien, charge or encumbrance of any kind or nature whatsoever upon any of the properties or assets of Seller. This Agreement and each and every agreement, document, exhibit and instrument to be executed, delivered and performed by the Seller or Holmberg in connection herewith constitute or will, when executed and delivered, constitute the valid and legally binding obligations of the Seller and Holmberg, as the case may be, enforceable against each of them in accordance with their respective terms, except as enforceability may be limited by applicable equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws from time to time in effect affecting the enforcement of creditors' rights generally.

**2.3 CONSENTS.** Except as set forth on Exhibit 2.3, no consent of, approval by, order or authorization of, or registration, declaration or filing by Seller or Holmberg with, any court or any governmental or regulatory agency or authority having jurisdiction over Seller or Holmberg or any of their property or assets or any other person is required on the part of Buyer in connection with the consummation of the transactions contemplated by this Agreement, excluding any registration, declaration or filing the failure to effect which would not have a material adverse effect on the financial condition of Buyer or the operation of its business after the Closing.

**2.4 TITLE TO PURCHASED ASSETS AND PROPERTY.** The Seller and Holmberg will have at Closing good and marketable title to all of the Purchased Assets and Property, respectively, which are being sold to Buyer under this Agreement, free and clear of all liens, claims, charges,

encumbrances, restrictions or security interests, except as set forth in Exhibit 2.4, which obligations will be paid in full at Closing. All of the Purchased Assets which are to be acquired by Buyer are in the possession of Seller and are generally in good operating condition and repair (ordinary wear and tear excepted). Neither Seller nor Holmberg is a party to any contract or obligation whereby there has been granted to anyone an absolute or contingent right to purchase, obtain or acquire any rights in the Property or in any of the assets, properties or operations of Seller or used in connection with the business of Seller.

**2.5 CONTRACTS AND LEASES.** Except as disclosed in Exhibit 2.5, Seller

(i) has no leases of personal property relating to the Purchased Assets, whether as lessor or lessee; (ii) has no contractual or other obligations relating to the Purchased Assets, whether written or oral; and (iii) has not given any power of attorney to any person or organization for any purpose relating to the Purchased Assets. Except as disclosed in Exhibit 2.5, Holmberg has no real estate lease on the Property in which he is the landlord or lessor. Exhibit 2.5 sets forth a complete list, including any amendment of each lease or contract which are part of the Purchased Assets to be acquired by the Buyer. Seller has furnished Buyer a copy of each contract, lease or other document relating to the Purchased Assets to which they are subject or are a party or a beneficiary, which is to be assumed or acquired by Buyer. Except as disclosed on Exhibit 2.5, to Seller's and Holmberg's knowledge, such contracts, leases or other documents are valid and in full force and effect according to their terms and constitutes a legal, valid and binding obligation of Seller or Holmberg and the other respective parties thereto and is enforceable in accordance with their terms, and neither Seller nor Holmberg has any knowledge of any default or breach under such contract, lease or other document or of any pending or threatened claims under any such contract, lease or other document. Neither the signing or execution of this Agreement, nor the consummation of all or any of the transactions contemplated under this Agreement, will constitute a breach or default under any such contract, lease or other document.

**2.6 LITIGATION.** Except as disclosed in Exhibit 2.6, there is no suit, claim, arbitration, investigation, action or proceeding entered against, now pending or, to the Seller's or Holmberg's knowledge, threatened against the Purchased Assets or the Property, before any court, arbitration, administrative or regulatory body or any governmental agency which may result in any judgment, order, award, decree, liability or other determination which will or could reasonably be expected to have any effect upon the Purchased Assets or Property, nor is there any basis known to Seller or Holmberg for any such action. Neither Seller nor Holmberg is subject to any judicial injunction or mandate or any quasi-judicial or administrative order or restriction directed to or against it or him or which would affect the Purchased Assets or Property.

**2.7 TAXES.** Seller and Holmberg have timely and accurately filed all federal, state, foreign and local tax returns and reports required to be filed by them prior to such dates and have timely paid all taxes shown on such returns as owed for the periods of such returns, including all withholding or other payroll related taxes shown on such returns. Seller and Holmberg have made adequate provision for the payment of all taxes accruable for all periods ending on or before the Closing Date to any taxing authority and are not delinquent in the payment of any material tax or governmental charge of any nature. No assessments or notices of deficiency or other communications have been received by Seller or Holmberg with respect to any tax return which has not been paid, discharged or fully reserved against and no amendments or applications

for refund have been filed or are planned with respect to any such return. There are no agreements between Seller or Holmberg and any taxing authority, including, without limitation, the Internal Revenue Service, waiving or extending any statute of limitations with respect to any tax return.

## 2.8 FINANCIAL INFORMATION.

(a) Buyer has been provided with true, correct and complete copies of the Federal Income Tax Returns (Form 1120S) for Amusement Center for the years ended December 30, 1994 and 1995, respectively ("Tax Returns). Buyer has also received true and complete copies of the unaudited balance sheet as of November 30, 1996, and the related unaudited statements of income for the eleven months period then ending (the "Financial Statement") for Amusement Center and B & R II. The Tax Returns and the Financial Statements are in accordance with the books and records of Amusement Center and B & R II and fairly present the financial position of the corporations and the result of operations and changes in financial position of the corporations as of the dates and for the periods indicated, in each case in conformity with the compilation by the corporations' certified public accountant, compiled on a consistent basis.

(b) Seller has no liability or obligation (whether accrued, absolute, contingent or otherwise) which is of a nature required to be reflected in financial statements prepared in conformity with the compilation by the corporations' certified public accountant, compiled on a consistent basis, except for (i) the liabilities and obligations which are disclosed, or reserved against in the Financial Statements or Exhibit 2.8(b) hereto, to the extent and in the amounts so disclosed or reserved against, and (ii) liabilities incurred or accrued in the ordinary course of business since December 1, 1996 and which do not, either individually or in the aggregate, have an adverse effect on the business, assets or operations of the Seller.

(c) Except as disclosed in the Interim Financial Statements or Exhibit 2.8(c), Seller is not in default with respect to any liabilities or obligations, and all such liabilities or obligations shown or reflected in the Interim Financial Statements or Exhibit 2.8(c) and such liabilities incurred or accrued subsequent to December 1, 1996 have been, or are being, paid and discharged as they become due, and all such liabilities and obligations were incurred in the ordinary course of business.

2.9 COMPLIANCE WITH LAWS. Seller is and at all times prior to the date hereof has been, in compliance with all statutes, orders, rules, and regulations applicable to it or to the ownership of its assets or the operation of its business, except for failures to be in compliance that would not have a material adverse effect on the business, properties, condition (financial or otherwise) or prospects of Seller, and Seller and Holmberg have no basis to expect to receive, and have not received, any order or notice of any such violation or claim of violation of any such statute, order, rule, ordinance or regulation.

2.10 ENTERTAINMENT LICENSE. A Place of Entertainment License for Seller issued by the City of Minneapolis, Minnesota is in full force and effect and will remain in full force and effect until the Closing.



**2.11 INTELLECTUAL PROPERTY.** The Seller is the owner of all right, title and interest in and to all of the Intellectual Property used in connection with the operation of Buns & Roses. Such Intellectual Property is free and clear of any material liens, mortgages, judgments, or other encumbrances of any kind, and no rights or licenses of any kind respecting the Intellectual property have been granted to any third party. There are no outstanding, or, to the best knowledge of the Seller or Holmberg, threatened claims of infringement against Seller or Holmberg respecting the use of any of the Intellectual Property in connection with the operations or business of the Seller and it has no knowledge of any trademark, service mark, trade name, assumed name, copyright, patent, trade secret, contractual or other rights of any third party which may be violated or infringed by the use of any of the Intellectual Property in connection with Seller's operations or business.

**2.12 INSURANCE POLICIES.** Exhibit 2.12 contains a complete and correct list of the insurance coverage maintained by the Seller. Copies of all policies relating to such insurance carried by the Seller have been delivered or will be made available to Buyer. The policies of insurance held by Seller are in such amounts, and insure against such losses and risks, as Seller reasonably deems appropriate for its property and business operations. All such insurance policies are in full force and effect, and all premiums due thereon have been paid. Valid policies for such insurance will be outstanding and duly in force at all times prior to the Closing.

**2.13 LABOR MATTERS.** Seller is not a party or otherwise subject to any collective bargaining agreement with any labor union or association. There are no discussions, negotiations, demands or proposals that are pending or have been conducted or made with or by any labor union or association, and there are not pending or threatened against Seller any labor disputes, strikes or work stoppages. To the best of Seller's and Holmberg's knowledge, Seller is in compliance with all federal and state laws respecting employment and employment practices, terms and conditions of employment and wages and hours, and, to its knowledge, is not engaged in any unfair labor practices. Seller is not a party to any written or oral contract, agreement or understanding for the employment of any officer, director or employee of the Seller.

**2.14 ENVIRONMENTAL MATTERS.** Except as set forth in Exhibit 2.14, neither the Seller nor any other party to this Agreement is now, nor has in the past, used or is using the Property for the handling, treatment, storage or disposal of any Hazardous Substance (as hereinafter defined). Except as set forth in Exhibit 2.14, no release, discharge, spillage or disposal of any Hazardous Substance and no soil or water contamination by any Hazardous Substance has occurred or is occurring in or on the Property. Except as set forth in Exhibit 2.14, the Seller and Holmberg have complied with all reporting requirements under any applicable federal, state or local environmental laws and permits, and there are no existing violations by the Seller or Holmberg of any such environmental laws or permits. Except as set forth in Exhibit 2.14, there are no claims, actions, suits, proceedings or investigations related to the presence, release, discharge, spillage or disposal of any Hazardous Substance or contamination of soil or water by any Hazardous Substance pending or threatened with respect to the Property or otherwise against the Seller or Holmberg in any court or before any state, federal or other governmental agency or private arbitration tribunal and to the best of the knowledge of Seller and any other party to this Agreement, there is no basis for any such claim, action, suit, proceeding or investigation. To the best of their knowledge, there are no underground storage tanks on the Property. Neither the Seller nor Holmberg is aware of any building or other improvement included in the Property

which contains any asbestos or any asbestos-containing materials. For the purposes of this Agreement, "Hazardous Substance" shall mean any hazardous or toxic substance or waste as those terms are defined by any applicable federal or state law or regulation including, without limitation, the Comprehensive Environmental Recovery Compensation and Liability Act, 42 U.S.C. 9601 and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 and petroleum, petroleum products and oil.

2.15 NO DEFAULT. Seller is not in default under any term or condition of any instrument evidencing, creating or securing any indebtedness of Seller, and there has been no default in any material obligation to be performed by Seller under any other contract, lease, agreement, commitment or undertaking to which it is a party or by which it or its assets or properties are bound, nor has Seller waived any material right under any such contract, lease, agreement, commitment or undertaking.

2.16 ABSENCE OF CHANGE. Neither the Seller nor Holmberg has any knowledge of any present or future condition or state of facts or circumstances which would materially and adversely affect the business of the Seller. Since December 1, 1996, the Seller has conducted its business in the ordinary course of business.

2.17 DISCLOSURE. No representation or warranty of Seller or Holmberg contained in this Agreement (including the exhibits hereto) contains any untrue statement or omits to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading.

2.18 NO BROKERAGE COMMISSION. No broker or finder has acted for the Seller in connection with this Agreement or the transactions contemplated hereby, and no person is entitled to any brokerage or finder's fee or compensation in respect thereof based in any way on agreements, arrangements or understandings made by or on behalf of the Seller.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Seller and Holmberg as follows:

3.1 ORGANIZATION OF BUYER. Buyer is a corporation duly organized, validly existing and in good standing in the laws of the state of Texas, with full power and authority to carry on the businesses in which it is engaged, to own the properties that it owns currently and will own at the Closing, and to perform its obligations under this Agreement.

3.2 AUTHORIZATION OF AGREEMENT. Buyer has all requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution and delivery by Buyer of this Agreement and the performance by Buyer of its obligations hereunder (a) have been duly and validly authorized by all requisite corporate action and (b) will not violate its charter or bylaws or any order, writ, injunction, decree, statute, rule or regulations applicable to it or any of its properties or assets, or be in conflict with, result in a breach of or constitute a default under any note, bond, indenture, mortgage, lease, license,

franchise agreement or other agreement, instrument or obligation, or result in the creation or imposition of any lien, charge or encumbrance of any kind or nature whatsoever upon any of the properties or assets of Buyer. This Agreement and each and every agreement, document, exhibit and instrument to be executed, delivered and performed by the Buyer in connection herewith constitute or will, when executed and delivered, constitute the valid and legally binding obligations of the Buyer enforceable against it in accordance with their respective terms, except as enforceability may be limited by applicable equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws from time to time in effect affecting the enforcement of creditors' rights generally.

3.3 DISCLOSURE. No representation or warranty of Buyer contained in this Agreement (including the exhibits hereto) contains any untrue statement or omits to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading.

3.4 INSURANCE. Buyer shall maintain insurance at such amounts and such liabilities of hazards as is customarily maintained by other companies operating similar businesses. Buyer shall deliver Certificates of such insurance to Sellers and Holmberg, and such Certificates shall be specified to all policies of insurance in effect and shall not be canceled except upon 10 days prior written notice to Seller and Holmberg; such insurance shall include general comprehensive liability insurance and coverage amount not less than \$1,000,000 per occurrence and per person; the insurance on the Property shall include fire and extended coverages in the amount not less than the Purchase Price assigned to the Property; and all policies of insurance shall name Seller and Holmberg as an additional insured thereunder.

3.5 DISPOSITION OF ASSETS. Buyer may sell or dispose of any inventory assets in the usual and ordinary course of business, and may sell or dispose of equipment provided the same shall be replaced with new equipment of like kind and quality. All of the Buyer's assets shall be maintained in good working order and repair.

3.6 BROKERAGE COMMISSION. No broker or finder has acted for the Buyer in connection with this Agreement or the transactions contemplated hereby, and no person is entitled to any brokerage or finder's fee or compensation in respect thereof based in any way on agreements, arrangements or understandings made by or on behalf of the Buyer, except the obligation of Buyer to pay for the services to Gilbert Kopolow, with Gilbert Kopolow and Associates Investments.

#### **ARTICLE IV COVENANTS**

4.1 CONSENTS AND FURTHER ACTIONS. As soon as practicable, Seller, Holmberg and Buyer will jointly commence to take all reasonable action required to obtain all consents, approvals and agreements of any third parties at the expense of Buyer. Specifically, without limiting the foregoing, Buyer will commence to take all reasonable action required to obtain the issuance of any and all permits necessary to operate Buns & Roses as a female topless entertainment facility, including the issuance of a liquor license duly issued and approved by the City of Minneapolis which will allow for the sale of liquor by Buyer at Buns & Roses. Seller,

Holmberg and Buyer each will keep the other informed of the status of any inquiries made of such party by any governmental agency or authority or members of their respective staffs with respect to this Agreement or the transactions contemplated hereby. In addition, subject to the terms and conditions herein provided, each of Seller, Holmberg and Buyer covenants and agrees to use reasonable efforts to take, or cause to be taken, all action, or do, or cause to be done, all things, necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement.

**4.2 CONDUCT OF BUSINESS OF SELLER.** The Seller and Holmberg agree that during the period from the date of this Agreement to the Closing Date, except as expressly contemplated by this Agreement or to the extent that Buyer may otherwise consent in writing, which consent shall not be unreasonably withheld, Seller and Holmberg shall cause Buns & Roses (a) to conduct its business in the ordinary and usual course; (b) to make no material changes in its operations except as expressly contemplated by this Agreement; (c) to use its best efforts to maintain and preserve its business organization, employees, customers and relationships; (d) to enter into no employment agreement with any person and to grant no changes in compensation of employees; (e) to pay and discharge all bills and monetary obligations in the ordinary course and timely and properly perform all of its obligations and commitments under all existing contracts and agreements pertaining to the business, except as to amounts or obligations that Seller contests in good faith; (f) not to sell, lease or otherwise dispose of or agree to sell, lease or otherwise dispose of any of its assets, except in the ordinary course of business; (g) not to declare or pay any dividends or make any distribution on any of its capital stock, except for Regulation S corporation distributions; (h) to make no capital expenditures in excess of \$10,000; (I) to make no loans or advances to officers of Seller; (j) to make no guaranties of the obligations or debts of others; (k) to incur no debts or obligations of any other corporation or entity; (l) to purchase no stock of or otherwise invest in any other corporation or entity; and (m) to issue no additional capital stock.

**4.3 ACCESS TO INFORMATION.** Between the date of this Agreement and the Closing Date, Seller shall give Buyer and its authorized representatives full access, at all reasonable times, to its businesses, properties and assets, and all of its financial books and records, agreements and records relating to the ownership and operation of Seller as shall be reasonably requested. Seller will permit Buyer and its representatives to make such inspections as they may require and will cause the officers of Seller to cooperate with Buyer in connection with such inspection.

**4.4 PROHIBITED NEGOTIATIONS.** Subsequent to the execution of the Agreement, and prior to the Closing Date of the Agreement, neither the Seller nor Holmberg shall solicit or encourage inquiries or proposals with respect to or furnish any information relating to or participate in any negotiations or discussions concerning, any sale or conveyance of the Property or any acquisition or purchase of all or a substantial portion of the assets of Seller or of an equity interest in Seller, or any business combination with Seller. Seller and/or Holmberg hereby agree to advise Buyer of any contact from any third party regarding the acquisition of the Property or the acquisition or other investment in Seller or of any contact which would relate to the transactions contemplated by this Agreement.

**4.5 PUBLIC ANNOUNCEMENTS.** Each party shall promptly advise and cooperate with the other prior to issuing, or permitting any of its directors, officers, employees or agents to issue,

any press release or other information to the press or otherwise for general release with respect to this Agreement or the transactions contemplated hereby. Seller and Holmberg shall have the right to advise its employees of this transaction as of the date the Liquor License is applied for.

4.6 FINDERS AND BROKERS FEES. Each party shall be liable for any finder's or broker's fees for which it has contracted or which may arise from its conduct. Each party shall indemnify and hold harmless the other party against any liability, damage, cost or expense involving a finder's or broker's fee and arising out of the conduct of such party. Any expenses or fees due to Mr. Gilbert Kopolow shall be at the expense of Buyer.

## **ARTICLE V CONDITIONS TO CLOSING**

5.1 CONDITIONS TO THE OBLIGATIONS OF SELLER AND HOLMBERG. The obligations of Seller and Holmberg to consummate the transactions contemplated hereby shall be subject to the satisfaction, on or before the Closing Date, of each and every one of the following conditions, unless waived, in whole or in part, by Seller and Holmberg for purposes of consummating such transaction.

(a) The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects on the Closing Date with the same force and effect as if they had been made on the Closing Date;

(b) Buyer shall have performed and complied with all agreements, obligations, covenants and conditions required by this Agreement to be performed or complied with on or prior to the Closing;

(c) The Seller and Holmberg shall have received a certificate, dated the Closing Date and signed by the president of the Buyer to the effect set forth in Section 5.1(a) and 5.1(b) for the purpose of verifying the accuracy of such representations and warranties and the performance and satisfaction of such covenants and conditions;

(d) Execution and delivery of the Mortgage Promissory Note and the Promissory Note by Buyer;

(e) Execution and delivery of the First Mortgage Deed on the Property to Holmberg;

(f) Execution and delivery of the Security Agreement;

(g) Axelrod, Smith & Kirshbaum, counsel for Buyer, shall have delivered to Seller and Holmberg the written opinion, dated as of the Closing Date, in form and substance satisfactory to Seller and its counsel, to the effect set forth on Exhibit 5.1.(g) and containing such other provisions as the parties may agree; and

(h) No action, suit or proceeding by or before any court or any governmental or regulatory authority shall have been commenced and no investigation by any

governmental or regulatory authority shall have been commenced seeking to restrain, prevent or challenge the transactions contemplated hereby or seeking judgments against Buyer.

5.2 CONDITIONS TO THE OBLIGATIONS OF BUYER. The obligations of the Buyer to effect the transactions contemplated hereby shall be subject to the satisfaction, on or before the Closing Date, of each and every one of the following conditions, unless waived, in whole or in part, by Buyer for purposes of consummating such transaction.

- (a) The representations and warranties of Seller and Holmberg set forth herein shall be true and correct in all material respects on the Closing Date with the same force and effect as if they had been made on the Closing Date;
- (b) Seller shall have performed and complied with all agreements, obligations, covenants and conditions required by this Agreement to be performed or complied with by Seller on or prior to the Closing;
- (c) The Buyer shall have received a certificate, dated the Closing Date and signed by the president of the Seller to the effect set forth in Section 5.2(a) and 5.2(b) for the purpose of verifying the accuracy of such representations and warranties and the performance and satisfaction of such covenants and conditions;
- (d) Approval and issuance to the Buyer of a liquor license duly issued, approved and authorized by the City of Minneapolis which will allow for the sale of liquor by the Buyer at the premises where Buns & Roses is located;
- (e) Buyer shall have obtained all necessary permits or other authorizations which may be needed to conduct topless entertainment on the Property;
- (f) Buyer shall have received from Holmberg a General Warranty Deed conveying good and marketable title to the Property, free and clear of any liens, charges or encumbrances (except a first lien on the Property to Holmberg by Buyer) and all contingencies and conditions pursuant to the Earnest Money Contract shall have been fulfilled;
- (g) Written termination of the existing Real Estate Lease between Holmberg and Amusement Center for the lease of the Property and the Sublease between Amusement Center and B&R II;
- (h) Holmberg shall have executed and delivered to Buyer the Non-Competition Agreement required by Section 6.2(a);
- (i) Seller shall have delivered to Buyer all instruments of assignment and bills of sale necessary to transfer to Buyer good and marketable title to the Purchased Assets;
- (j) The independent certified public accountants of the Buyer shall be satisfied that the Seller's books and records can be audited for the fiscal years ended 1994 and 1995 and for the current fiscal year of 1996;

(k) Bernick and Lifson P.A., counsel for Seller and Holmberg, shall have delivered to Buyer the written opinion, dated as of the Closing Date, in form and substance satisfactory to Buyer and its counsel, to the effect set forth on Exhibit 5.2(k) and containing such other provisions as the parties may agree; and

(l) No action, suit or proceeding by or before any court or any governmental or regulatory authority shall have been commenced and no investigation by any governmental or regulatory authority shall have been commenced seeking to restrain, prevent or challenge the transactions contemplated hereby or seeking judgments against Seller.

## **ARTICLE VI THE CLOSING**

6.1 **TIME AND PLACE OF CLOSING.** The Closing of the transactions provided for in this Agreement ("Closing") shall be held at the offices of Messerli & Kramer P.A., 1800 5th Street Towers, Minneapolis, Minnesota 55402, commencing at 10:00 a.m. Central Daylight Time on the sooner of (i) April 30, 1997 or (ii) five (5) business days after the issuance and approval of a liquor license to Buyer, unless the liquor license is not approved and issued to Buyer by April 30, 1997, in which event the Closing shall occur five (5) business days after such approval is obtained. In the event that the liquor license has not been approved and issued to Buyer by 5:00 p.m. Central Daylight Time on July 31, 1997, then, unless otherwise provided below, either party may provide written notice to the other that this Agreement is canceled and terminated. In such event, the Earnest Money, together with any accrued interest, shall be delivered in the manner set forth in Article 9 hereof. In the event that the Closing does not occur by July 31, 1997, the Seller shall have the right, but not the obligation, to extend the date of Closing, on a month to month basis, until October 31, 1997, by the payment to the Seller, on a month to month basis, of a \$25,000.00 extension fee for each month extended. The Buyer shall make such \$25,000.00 extension fee payment to the Seller on or before two days prior to the end of the month preceding the month for which an extension is to be obtained. The day on which the Closing occurs is referred to herein as the "Closing Date."

6.2 **RELATED TRANSACTION.** In addition to the purchase and sale of the Purchased Assets and the Property, the following action shall take place contemporaneously at the Closing:

(a) Holmberg shall enter into a Non-Competition Agreement to be dated the Closing Date and to be in the form of Exhibit 6.2(a), attached hereto (the "Non-Competition Agreement"); and

(b) Holmberg and Buyer shall have duly performed, complied with and satisfied all covenants, agreements, terms and conditions required by the Earnest Money Contract to be performed, complied with or satisfied by them at the Closing Date.

6.3 CLOSING DOCUMENTS OF SELLER AND HOLMBERG. At the Closing, Seller and Holmberg shall deliver or cause to be delivered to Buyer the following:

- (a) all instruments of assignment and bills of sale necessary to transfer to Buyer good and marketable title to the Purchased Assets free and clear of all liens, charges or encumbrances;
- (b) Buyer shall have received from Holmberg a General Warranty Deed conveying good and marketable title to the Property free and clear of all liens, charges or encumbrances (except a first lien on the Property to Holmberg by Buyer);
- (c) Written termination agreement of the existing Real Estate Lease between Holmberg and Amusement Center for the lease of the Property and the Sublease between Amusement Center and B&R II;
- (d) officers certificate required by Section 5.2(c); and
- (e) opinion of Bernick and Lifson, P.A., counsel to Seller and Holmberg, substantially in the form attached hereto as Exhibit 5.2(e).

6.4 CLOSING DOCUMENTS OF BUYER. At the Closing, Buyer shall deliver or cause to be delivered to Seller and Holmberg, the following:

- (a) \$440,000.00, payable in certified check, bank check, or "Fed Funds" wire transfer;
- (b) \$60,000.00 to be transferred from the Earnest Money Escrow Account as set forth in Section 1.4 and in the Earnest Money Contract;
- (c) Mortgage Promissory Note in the amount of \$500,000.00, the form of which is set forth as Exhibit 1.3 (ii)(a);
- (d) Promissory Note in the amount of \$2,000,000.00, the form of which is set forth as Exhibit 1.3 (ii)(b);
- (e) First Mortgage Deed on the Property from Buyer to Holmberg, the form of which is set forth as Exhibit 1.3 (ii)(c);
- (f) Security Agreement, the form of which is set forth as Exhibit 1.3 (ii)(d);
- (g) officers certificate required by Section 5.1(c); and
- (h) opinion of Axelrod, Smith & Kirshbaum, counsel for Buyer, substantially in the form attached hereto as Exhibit 5.1(g).



## ARTICLE VII INDEMNIFICATION

7.1 INDEMNIFICATION FROM THE SELLER AND HOLMBERG. The Seller and Holmberg agree to and shall indemnify, defend (with legal counsel reasonably acceptable to Buyer), and hold Buyer, its officers, directors, shareholders, employees, agents, affiliates, and assigns harmless at all times after the date of this Agreement, from and against and in respect of, any liability, claim, deficiency, loss, damage or injury, and all reasonable costs and expenses

(including reasonable attorneys' fees and costs of any suit related thereto) suffered or incurred by Buyer arising from (a) any misrepresentation by, or breach of any covenant or warranty of Seller or Holmberg contained in this Agreement, or any Exhibit, certificate, or other instrument furnished or to be furnished by Seller or Holmberg hereunder, or any claim by a third party (regardless of whether the claimant is ultimately successful) which if true would be such a misrepresentation or breach; (b) any nonfulfillment of any agreement on the part of Seller or Holmberg under this Agreement, or from any material misrepresentation in or material omission from, any certificate or other instrument furnished or to be furnished to Buyer hereunder; and (c) any suit, action, proceeding, claim or investigation, pending or threatened against or affecting Seller or Holmberg which arises from, which arose from, or which is based upon any matter or state of facts existing prior to Closing.

7.2 INDEMNIFICATION FROM THE BUYER. The Buyer agrees to and shall indemnify, defend (with legal counsel reasonably acceptable to Seller and Holmberg) and hold Seller and Holmberg, its officers, directors, shareholders, employees, agents and assigns harmless at all times after the date of Closing from and against, and in respect of any liability, claim, deficiency, loss, damage, or injury, and all reasonable costs and expenses (including reasonable attorneys' fees and costs of any suit related thereto) suffered or incurred by Seller and Holmberg, from (a) any misrepresentation by, or breach of any covenant or warranty of, the Buyer contained in this Agreement or any Exhibit, certificate, or other agreement or instrument furnished or to be furnished by Buyer hereunder, or any claim by a third party (regardless of whether the claimant is ultimately successful), which if true, would be such a misrepresentation or breach; (b) any nonfulfillment of any agreement on the part of Buyer under this Agreement, or from any misrepresentation in or omission from, any certificate or other agreement or instrument furnished or to be furnished to Seller or Holmberg hereunder; and (c) any suit, action, proceeding, claim or investigation which arises from or which is based upon any matter or state of facts subsequent to Closing.

7.3 DEFENSE OF CLAIMS. If any lawsuit or enforcement action is filed against any party entitled to the benefit of indemnity hereunder, written notice thereof shall be given to the indemnifying party as promptly as practicable (and in any event not less than fifteen (15) days prior to any hearing date or other date by which action must be taken); provided that the failure of any indemnified party to give timely notice shall not affect rights to indemnification hereunder except to the extent that the indemnifying party demonstrates actual damage caused by such failure. After such notice, if the indemnifying party shall acknowledge in writing to such indemnified party that this Agreement applies with respect to such lawsuit or action, then the indemnifying party shall be entitled, if it so elects, to take control of the defense and investigation of such lawsuit or action and to employ and engage attorneys of its own choice to handle and defend the same, at the indemnifying party's cost, risk and expense; and such indemnified party shall cooperate in all reasonable respects, at its cost, risk and expense, with the indemnifying party and such attorneys in the investigation, trial and defense of such lawsuit or action and any appeal arising therefrom; provided, however, that the indemnified party may, at

its own cost, participate in such investigation, trial and defense of such lawsuit or action and any appeal arising therefrom. The indemnifying party shall not, without the prior written consent of the indemnified parties, effect any settlement of any proceeding in respect of which any indemnified party is a party and indemnity has been sought hereunder unless such settlement of a claim, investigation, suit, or other proceeding only involves a remedy for the payment of money by the indemnifying party and includes an unconditional release of such indemnified parties from all liability on claims that are the subject matter of such proceeding.

7.4 DEFAULT OF INDEMNIFICATION OBLIGATION. If an entity or individual having an indemnification, defense and hold harmless obligation, as above provided, shall fail to assume such obligation, then the party or entities or both, as the case may be, to whom such indemnification, defense and hold harmless obligation is due shall have the right, but not the obligation, to assume and maintain such defense (including reasonable counsel fees and costs of any suit related thereto) and to make any settlement or pay any judgment or verdict as the individual or entities deem necessary or appropriate in such individual's or entities' absolute sole discretion and to charge the cost of any such settlement, payment, expense and costs, including reasonable attorneys' fees, to the entity or individual that had the obligation to provide such indemnification, defense and hold harmless obligation and same shall constitute an additional obligation of the entity or of the individual or both, as the case may be.

## **ARTICLE VIII INTEGRATION**

The parties acknowledge and agree that all agreements, documents, obligations and transactions contemplated by this Agreement shall be integrated. Accordingly, if there shall be a default, nonperformance or breach of any of the same, or any obligation exists 30 days after notice of such default (five days if for nonpayment), non-performance or breach is given to the party committing the same, the same shall constitute a material breach of all obligations and all of such agreements, documents, obligations and transactions, entitling Seller, Holmberg, or Buyer to pursue any or all available legal remedies at law, in equity or by any of such agreements. All remedies shall be cumulative and the failure or choice by Seller, Holmberg or Buyer to exercise any one or more remedies shall not preclude or prevent the later exercise of any such remedies from time to time. The party committing such default, nonperformance or breach shall be responsible for the reasonable attorneys' fees incurred by the other party as a result of such default, nonperformance or breach, even if such default, nonperformance or breach is subsequently cured.

## **ARTICLE IX MISCELLANEOUS**

9.1 NOTICES. All communications required or permitted under this Agreement shall be in writing and any communication or delivery hereunder shall be deemed to have been duly made if actually delivered or sent by electronic fax or if mailed by registered or certified mail, postage prepaid, addressed to the party being notified as set forth below. All such notices and communications shall be deemed to have been received on the date of delivery or on the third business day after the mailing thereof. Any party may, by written notice so delivered to the other, change the address to which delivery shall thereafter be made. Notices to the parties

hereto shall be made at the addresses set forth below:

(a) If to Seller or Holmberg, to:

Mr. Larry Holmberg Amusement Center, Inc. 300 South 3rd Street Minneapolis, Minnesota 55415 Fax: \_\_\_\_\_

With a copy to:

Bernick & Lifson, P.A.

Attn: Mr. Saul Bernick  
5500 Wayzata Blvd., Ste. 1200  
Minneapolis, Minnesota 55416  
Fax: (612) 546-1003

(b) If to Buyer, to:

Mr. Robert L. Watters Rick's Cabaret International, Inc. 3113 Bering Drive Houston, Texas 77057 Fax: (713) 785-2593

With a copy to:

Mr. Robert D. Axelrod Axelrod, Smith & Kirshbaum 5300 Memorial Drive, Suite 700 Houston, Texas 77007 Fax: (713) 552-0202

9.2 ASSIGNMENT. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties (except that Buyer may assign its rights to an entity which is wholly owned by Buyer) without the prior written consent of the other parties, which consent will not be unreasonably withheld. This Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective heirs, personal representatives, successors and assigns.

9.3 COUNTERPARTS. This Agreement may be executed in any number of counterparts, which taken together shall constitute one and the same instrument and each of which shall be considered an original for all purposes.

9.4 SECTION HEADINGS. The section headings contained in this Agreement are for convenient reference only and shall not in any way affect the meaning or interpretation of this Agreement.

9.5 ENTIRE AGREEMENT; AMENDMENT. This Agreement, the documents to be executed hereunder and the exhibits attached hereto constitute the entire agreement among the parties hereto pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties pertaining to the subject matter hereof, and there are no warranties, representations or other agreements among the parties in connection with the subject matter hereof except as specifically set forth herein or in documents delivered pursuant hereto. No supplement, amendment, alteration, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the parties hereto. All of the exhibits referred to in this Agreement are hereby incorporated into this Agreement by reference and constitute a part of this Agreement.

9.6 SURVIVAL. All warranties and representations herein shall survive the Closing and shall be true and correct as of the date hereof and as of the Closing Date. In addition, Buyer's warranties shall be true and correct in accordance with their terms until all obligations have been fully and finally performed. The respective representations, warranties, covenants and agreements set forth in this Agreement shall survive the Closing for the maximum period allowed by law.

9.7 PUBLIC ANNOUNCEMENTS. The parties hereto agree that prior to making any public announcement or statement with respect to the transactions contemplated by this Agreement, the party desiring to make such public announcement or statement shall consult with the other parties hereto and exercise their best efforts to (i) agree upon the text of a joint public announcement or statement to be made by all of such parties or (ii) obtain approval of the other parties hereto to the text of a public announcement or statement to be made solely by the party desiring to make such public announcement; provided, however, that if any party hereto is required by law to make such public announcement or statement, then such announcement or statement may be made without the approval of the other parties.

9.8 VALIDITY. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

9.9 WAIVER. No waiver by any party of any default or non-performance shall be deemed a waiver of any subsequent default or non-performance, and no waiver of any kind shall be effective unless set forth in writing and signed by the party against whom such waiver is to be charged.

9.10 FURTHER ASSURANCES. Each party covenants that at any time, and from time to time, after the Closing Date, it will execute such additional instruments and take such actions as may be reasonably requested by the other parties to confirm or perfect or otherwise to carry out the intent and purposes of this Agreement.

9.11 EXHIBITS NOT ATTACHED. Any exhibits not attached hereto on the date of execution of this Agreement shall be deemed to be and shall become a part of this Agreement as if executed

on the date hereof upon each of the parties initialing and dating each such exhibit, upon their respective acceptance of its terms, conditions and/or form.

9.12 EXPENSES. All expenses incurred by the parties hereto in connection with or related to the authorization, preparation and execution of this Agreement and the Closing of the transactions contemplated hereby, shall be borne solely and entirely by the party which has incurred the same.

9.13 ATTORNEYS' REVIEW. In connection with the negotiation and drafting of this Agreement, the parties represent and warrant to each other that they have had the opportunity to be advised by attorneys of their own choice.

9.14 GENDER. All personal pronouns used in this Agreement shall include the other genders, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural, and vice versa, whenever appropriate.

9.15 JURISDICTION. This Agreement was entered into in the City of Minneapolis, State of Minnesota, and the laws of the State of Minnesota shall govern and be applicable to this Agreement and any interpretation or construction thereto.

9.16 RETURN OF EARNEST MONEY. In the event there is no Closing on this Agreement based upon this Agreement being canceled and terminated as permitted in either Section 5.1 or Section 5.2, then the Earnest Money, together with any accrued interest shall be refunded to Buyer as soon as is practicable (not more than five (5) business days) after either party cancels and terminates this Agreement by providing written notice of such cancellation and termination to the other party. Notwithstanding the foregoing, if the Closing does not occur for a reason other than the cancellation or termination as permitted in either Section 5.1 or Section 5.2, or if the Closing does not occur as a result of a determination by the Board of Directors of the Buyer not to consummate the transactions contemplated hereby, then the Sellers and Shareholder shall receive, in the aggregate, \$50,000.00 of the Earnest Money as liquidated damages, which shall be their sole and exclusive remedy.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Agreement to be executed effective as of the day and year first above written.

**AMUSEMENT CENTER, INC.**

By: /s/ LARRY HOLMBERG

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*Larry Holmberg, President*

**BUNS & ROSES II, INC.**

By: /s/ LARRY HOLMBERG

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*Larry Holmberg, President*

/s/ LARRY HOLMBERG

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*LARRY HOLMBERG, Individually*

**RICK'S CABARET INTERNATIONAL, INC.**

By: /s/ ROBERT L. WATTERS

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*Robert L. Watters, President*

**Exhibit 10.2**

**EARNEST MONEY CONTRACT  
("AGREEMENT")**

THIS EARNEST MONEY CONTRACT IS MADE AND ENTERED INTO AS OF THE 24TH DAY OF DECEMBER, 1996, BETWEEN LARRY A. HOLMBERG, A SINGLE INDIVIDUAL ("SELLER") AND RICK'S CABARET INTERNATIONAL, INC., A TEXAS CORPORATION, WHOSE INTEREST IS TO BE ASSIGNED TO A CORPORATION TO BE FORMED (BOTH HEREINAFTER REFERRED TO AS "PURCHASER").

**IN CONSIDERATION OF THE COVENANTS AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:**

1. PROPERTY TO BE PURCHASED. SUBJECT TO COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, SELLER SHALL SELL TO PURCHASER AND PURCHASER SHALL PURCHASE FROM SELLER THE FOLLOWING (COLLECTIVELY THE "PROPERTY"):

A. THE REAL PROPERTY LOCATED AT 300 SOUTH THIRD STREET, CITY OF MINNEAPOLIS, COUNTY OF HENNEPIN, STATE OF MINNESOTA, LEGALLY DESCRIBED IN EXHIBIT A ATTACHED HERETO SUBJECT TO FURTHER VERIFICATION BY SURVEY AND TITLE COMPANY, TOGETHER WITH ALL EASEMENTS, TENEMENTS, HEREDITAMENTS, AND APPURTENANCES BELONGING THERETO (THE "REAL PROPERTY") AND ALL BUILDINGS, STRUCTURES AND OTHER IMPROVEMENTS ERECTED OR PLACED ON SAID REAL PROPERTY (THE "IMPROVEMENTS");

B. ALL SUPPLIES, TOOLS, MACHINERY, EQUIPMENT, AND OTHER ITEMS OF PERSONAL PROPERTY LOCATED IN THE IMPROVEMENTS OR USED OR USEFUL IN CONNECTION WITH THE MAINTENANCE, MANAGEMENT OR OPERATION OF SAID REAL PROPERTY OR THE IMPROVEMENTS (THE "PERSONAL PROPERTY");

C. ALL LEASES AND TENANCIES PERTAINING TO THE FOREGOING;

D. ALL PERMITS, LICENSES, WARRANTIES, CONTRACT RIGHTS AND INTANGIBLES TO BE ASSIGNED TO PURCHASER.

2. PURCHASE PRICE. THE PURCHASE PRICE FOR THE PROPERTY ("PURCHASE PRICE") SHALL BE THE SUM OF SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$750,000.00) PAYABLE AS FOLLOWS:

A. SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00) AS EARNEST MONEY (THE "EARNEST MONEY") WHICH SHALL BE DEPOSITED BY PURCHASER WITH FIRST AMERICAN TITLE INSURANCE COMPANY, 1150 METROPOLITAN CENTRE, 333 SOUTH SEVENTH STREET, MINNEAPOLIS, MINNESOTA 55402 ("ESCROW AGENT") CONTEMPORANEOUSLY WITH PURCHASER DELIVERING THIS OFFER TO PURCHASE TO SELLER. THE EARNEST MONEY SHALL BE PLACED AND HELD BY ESCROW AGENT IN ITS COMMERCIAL INTEREST BEARING ACCOUNT IN ACCORDANCE WITH AN ESCROW AGREEMENT IN SUBSTANTIALLY THE FORM ATTACHED HERETO AS EXHIBIT B ("ESCROW AGREEMENT"). ANY AND ALL INTEREST ACCRUING ON THE EARNEST MONEY SHALL BE PAID TO PURCHASER AND SHALL ACCRUE SOLELY FOR PURCHASER'S BENEFIT;

B. ONE HUNDRED NINETY THOUSAND AND NO/100 DOLLARS (\$190,000.00) IN CASH AT CLOSING; AND

C. FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) BY PURCHASER EXECUTING A PROMISSORY NOTE IN THE FORM ATTACHED AS EXHIBIT C, SECURED BY A COMBINATION

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT IN THE FORM ATTACHED AS EXHIBIT D AND UCC-2 FINANCING STATEMENT IN THE FORM ATTACHED AS EXHIBIT E. THE PROMISSORY NOTE SHALL BE GUARANTEED BY RICK'S CABARET INTERNATIONAL, INC. IN THE FORM ATTACHED HERETO AS EXHIBIT F.

3. TITLE TO BE DELIVERED. SELLER AGREES TO CONVEY MARKETABLE FEE SIMPLE TITLE IN THE PROPERTY TO PURCHASER SUBJECT ONLY TO SUCH EXCEPTIONS TO TITLE AS PURCHASER APPROVES IN WRITING.

A. AS SOON HEREAFTER AS PURCHASER ELECTS AT SELLER'S SOLE COST AND EXPENSE, BUYER SHALL:

I. CAUSE TO BE ISSUED AND DELIVERED TO PURCHASER A COMMITMENT FOR AN ALTA FORM B EXTENDED COVERAGE OWNER'S TITLE INSURANCE POLICY (THE "COMMITMENT") ISSUED BY FIRST AMERICAN TITLE INSURANCE COMPANY, MINNEAPOLIS, MINNESOTA (THE "TITLE COMPANY") WHEREIN SAID TITLE COMPANY AGREES TO ISSUE TO PURCHASER UPON THE RECORDING OF THE DEED AND OTHER CONVEYANCE DOCUMENTS REFERRED TO HEREIN AN ALTA FORM B OWNER'S TITLE INSURANCE POLICY (THE "TITLE POLICY") IN THE FULL AMOUNT OF THE PURCHASE PRICE WITH A ZONING ENDORSEMENT AND SO-CALLED OWNER'S EXTENDED COVERAGE ENDORSEMENT. THE COMMITMENT WILL BE ACCOMPANIED BY COPIES OF ALL RECORDED DOCUMENTS AFFECTING THE PROPERTY;

II. CAUSE TO BE DELIVERED TO PURCHASER AT SELLER'S SOLE COST AND EXPENSE A CURRENT "AS BUILT" SURVEY (THE "SURVEY") OF THE PROPERTY PREPARED BY A DULY LICENSED LAND SURVEYOR IN THE STATE OF MINNESOTA APPROVED BY PURCHASER. THE SURVEY SHALL BE PREPARED IN ACCORDANCE WITH THE MINIMUM STANDARD DETAIL REQUIREMENTS ESTABLISHED FOR ALTA/ACSM LAND TITLE SURVEYS, SHALL DELINEATE THE BOUNDARY LINES OF THE REAL PROPERTY AND THE LOCATION OF THE IMPROVEMENTS THEREON, TOGETHER WITH SETBACKS, PHYSICAL ENCROACHMENTS FROM OR ON THE REAL PROPERTY, EASEMENTS AND RIGHTS OF WAY, AND ALL OTHER MATTERS AFFECTING THE REAL PROPERTY. THE SURVEY SHALL BE CERTIFIED TO PURCHASER, THE TITLE COMPANY AND, IF APPLICABLE, PURCHASER'S LENDER, AND SHALL BE SUFFICIENT TO CAUSE THE TITLE COMPANY TO DELETE ANY EXCEPTION FOR SURVEY MATTERS FROM THE TITLE POLICY; AND

III. NOTWITHSTANDING THE ABOVE, PURCHASER SHALL PAY THE INITIAL COST OF THE TITLE COMMITMENT AND "AS BUILT" SURVEY, SELLER SHALL REIMBURSE PURCHASER FOR SUCH COST AT CLOSING, OR IF SELLER DEFAULTS ON THE PERFORMANCE OF THIS AGREEMENT OR ON THE PERFORMANCE OF THAT CERTAIN ASSET PURCHASE AGREEMENT DATED THE \_\_\_\_\_ DAY OF DECEMBER, 1996, ENTERED INTO BETWEEN AMUSEMENT CENTER, INC., A MINNESOTA CORPORATION AND BUNS & ROSES II, INC., A MINNESOTA CORPORATION (COLLECTIVELY REFERRED TO THEREIN AS "SELLER"), LARRY HOLMBERG, AN INDIVIDUAL AND THE SOLE SHAREHOLDER OF AMUSEMENT CENTER, INC., AND RICK'S CABARET INTERNATIONAL, INC., A TEXAS CORPORATION OR A CORPORATION TO BE FORMED AS BUYER (HEREINAFTER REFERRED TO AS "ASSET PURCHASE AGREEMENT"). IF PURCHASER DEFAULTS ON THIS AGREEMENT, SELLER SHALL NOT BE REQUIRED TO REIMBURSE PURCHASER FOR THE COST OF THE TITLE COMMITMENT AND "AS BUILT" SURVEY.

B. PURCHASER SHALL HAVE TWENTY (20) DAYS AFTER RECEIPT OF THE TITLE COMMITMENT AND SURVEY TO RENDER OBJECTIONS TO TITLE IN WRITING TO SELLER AND SELLER SHALL HAVE TWENTY (20) DAYS FROM THE DATE IT RECEIVES SUCH OBJECTIONS TO HAVE THE SAME REMOVED OR SATISFIED. IF SELLER SHALL FAIL TO HAVE SUCH OBJECTIONS REMOVED WITHIN THAT TIME, PURCHASER MAY, AT ITS SOLE DISCRETION, EITHER (A) TERMINATE THIS AGREEMENT WITHOUT ANY LIABILITY ON ITS PART AND RECEIVE A REFUND OF THE EARNEST MONEY (TOGETHER WITH ACCRUED INTEREST), OR (B) IF THE



OBJECTIONS ARE SUCH THAT THEY MAY BE REMOVED BY THE EXPENDITURES OF SUMS OF MONEY, TAKE TITLE TO THE PROPERTY, DISCHARGE SUCH OBJECTIONS, AND RECEIVE A CREDIT AGAINST THE PURCHASE PRICE FOR THE SUMS SO EXPENDED, OR (C) IF THE OBJECTIONS ARE SUCH THAT THEY MAY NOT BE REMOVED BY EXPENDITURES OF SUMS OF MONEY, TAKE TITLE SUBJECT TO SUCH OBJECTIONS. SELLER AGREES TO USE ITS BEST EFFORTS TO PROMPTLY SATISFY ANY SUCH OBJECTIONS.

4. DELIVERY OF DOCUMENTS UPON EXECUTION. IF IN SELLER'S POSSESSION OR SELLER CAN REASONABLY ACQUIRE, SELLER SHALL DELIVER TO PURCHASER WITHIN SIXTY (60) DAYS OF FULL EXECUTION AND DELIVERY OF THIS AGREEMENT, ALL OF THE FOLLOWING (THE "PROPERTY DATA"):

A. A COPY OF SELLER'S LATEST TITLE INSURANCE POLICY ON THE REAL PROPERTY;

B. COPIES OF ANY "AS-BUILT" SURVEYS AND TOPOGRAPHICAL SURVEYS OF THE PROPERTY IN SELLER'S POSSESSION;

C. COPIES OF ANY AND ALL PLANS AND SPECIFICATIONS FOR THE PROPERTY IN SELLER'S POSSESSION;

D. COPIES OF ANY TERMITE INSPECTION REPORTS, TERMITE REPAIR BONDS OR ANY OTHER TERMITE BOND FOR THE PROPERTY IN SELLER'S POSSESSION;

E. COPIES OF ANY SOIL TEST BORINGS, STRUCTURAL OR MECHANICAL ENGINEERING REPORTS, ENVIRONMENTAL STUDIES OR ANY OTHER DOCUMENTATION PERTAINING TO THE PHYSICAL CONDITION OF THE REAL PROPERTY OR THE IMPROVEMENTS IN SELLER'S POSSESSION;

F. COPIES OF ANY UNPAID AND THE MOST RECENT REAL ESTATE AND PERSONAL PROPERTY TAX BILLS FOR THE PROPERTY AND ANY SUBSEQUENT NOTICES OF REASSESSMENT;

G. A LIST OF ALL UTILITY ACCOUNT NUMBERS AND THEIR RESPECTIVE ADDRESSES FOR ALL UTILITIES SERVING THE PROPERTY, AND COPIES OF ALL BILLS FOR EACH ACCOUNT FOR THE PAST 12 MONTHS, TOGETHER WITH FORM LETTERS PROVIDED BY PURCHASER TO BE SIGNED BY SELLER ADDRESSED TO ALL UTILITY PROVIDERS AUTHORIZING PURCHASER AND ITS AGENTS TO MAKE THE INQUIRIES REFERRED TO IN SECTION 5 HEREOF;

H. A LIST OF ALL PROPERTY EMPLOYEES, THEIR JOB TITLES AND DESCRIPTIONS, THEIR PRESENT SALARIES OR WAGES, BENEFITS AND TERM OF THEIR EMPLOYMENT;

I. COPIES OF ALL OPERATING AND MAINTENANCE AGREEMENTS AND SERVICE CONTRACTS, WHICH EXCEED ONE MONTH IN LENGTH, INCLUDING ANY TELEPHONE DIRECTORY ADVERTISEMENT CONTRACT, AND CABLE TELEVISION AGREEMENTS OR EASEMENTS IN EFFECT AT THE PROPERTY;

J. A LIST OF ALL TANGIBLE PERSONAL PROPERTY TO BE TRANSFERRED IN THIS TRANSACTION;

K. COPIES OF ALL PROMISSORY NOTES, MORTGAGES, DEEDS OF TRUST, CONTRACTS FOR DEED, ASSIGNMENTS OF RENTS AND OTHER DOCUMENTS EVIDENCING THE EXISTING FINANCING;

L. COPIES OF ANY INSURANCE POLICIES COVERING THE PROPERTY;

M. ANY OTHER INFORMATION RELATING TO THE PROPERTY REASONABLY REQUESTED BY PURCHASER.

5. INSPECTIONS. PURCHASER, ITS COUNSEL, ACCOUNTANTS, AGENTS AND OTHER REPRESENTATIVES, SHALL HAVE FULL AND CONTINUING ACCESS TO THE PROPERTY AND ALL PARTS THEREOF, AS WELL AS TO ALL ITEMS REFERRED TO

IN SECTION 4 AND ALL OTHER PAPERS AND DOCUMENTS OF SELLER AS THEY RELATE TO THE TITLE, PHYSICAL CONDITION, DEVELOPMENT AND OPERATION OF THE PROPERTY. PURCHASER AND ITS AGENTS AND REPRESENTATIVES SHALL ALSO HAVE THE RIGHT TO ENTER UPON THE PROPERTY DURING REASONABLE BUSINESS HOURS AFTER THE EXECUTION AND DELIVERY HEREOF FOR ANY PURPOSE WHATSOEVER, INCLUDING INSPECTING, SURVEYING, ENGINEERING, TEST BORING, PERFORMANCE OF ENVIRONMENTAL TESTS AND SUCH OTHER WORK AS PURCHASER SHALL CONSIDER APPROPRIATE AND SHALL HAVE THE FURTHER RIGHT TO MAKE SUCH INQUIRIES OF HOLDERS OF EXISTING FINANCING, GOVERNMENTAL AGENCIES AND UTILITY COMPANIES, ETC., AND TO MAKE SUCH FEASIBILITY STUDIES AND ANALYSES AS IT CONSIDERS APPROPRIATE (COLLECTIVELY THE "INSPECTIONS"). PURCHASER SHALL INDEMNIFY AND HOLD SELLER, ITS AGENTS OR AFFILIATES, HARMLESS FROM ANY AND ALL LIABILITIES, LOSSES, COSTS AND EXPENSES (INCLUDING COURT COSTS AND REASONABLE ATTORNEYS' FEES) INCURRED BY SELLER DUE TO THE DEATH OR INJURY OF ANY PERSON AND DAMAGE TO ANY PROPERTY CAUSED BY OR ARISING OUT OF ANY INSPECTION OF THE PROPERTY PURSUANT TO THIS PARAGRAPH.

6. RISK OF LOSS. UNTIL THE CLOSING DATE, SELLER SHALL HAVE THE FULL RESPONSIBILITY AND THE ENTIRE ----- LIABILITY FOR ANY AND ALL DAMAGES OR INJURY OF ANY KIND WHATSOEVER TO THE REAL PROPERTY, THE IMPROVEMENTS THEREON, ANY AND ALL PERSONS, WHETHER EMPLOYEES OR OTHERWISE, AND ALL PROPERTY FROM AND CONNECTED TO THE PROPERTY. IF, PRIOR TO THE CLOSING, THE PROPERTY IS DAMAGED OR THE IMPROVEMENTS ARE DESTROYED OR THE REAL PROPERTY SHALL BE THE SUBJECT OF AN ACTION IN EMINENT DOMAIN OR A PROPOSED TAKING BY A GOVERNMENTAL AUTHORITY, WHETHER TEMPORARY OR PERMANENT, SELLER SHALL IMMEDIATELY NOTIFY PURCHASER OF SUCH DAMAGE, DESTRUCTION OR PROPOSED TAKING, AND PURCHASER, AT ITS SOLE DISCRETION, SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT UPON NOTICE TO SELLER WITHOUT LIABILITY ON ITS PART BY SO NOTIFYING SELLER AND THE EARNEST MONEY AND ALL OTHER SUMS HERETOFORE PAID BY PURCHASER (WITH ACCRUED INTEREST) SHALL BE REFUNDED TO PURCHASER. IF THE REAL PROPERTY OR IMPROVEMENTS ARE DAMAGED BUT PURCHASER DOES NOT EXERCISE ITS RIGHT OF TERMINATION, SELLER SHALL PROCEED FORTHWITH TO REPAIR THE DAMAGE TO THE REAL PROPERTY AND IMPROVEMENTS AND ANY AND ALL PROCEEDS ARISING OUT OF SUCH DAMAGE OR DESTRUCTION, IF THE SAME BE INSURED, OR OUT OF ANY SUCH EMINENT DOMAIN TAKING, SHALL BE HELD IN TRUST BY SELLER FOR THE BENEFIT OF SUCH REPAIR AND PAID OVER TO THE PARTIES PERFORMING SUCH REPAIRS, IF SUCH REPAIRS ARE COMPLETED PRIOR TO THE CLOSING DATE, OR PAID TO PURCHASER ON THE CLOSING DATE IF THE REPAIRS ARE NOT COMPLETED AS OF SUCH DATE. IN NO EVENT SHALL THE PURCHASE PRICE BE INCREASED BY THE AMOUNT OF ANY SUCH PROCEEDS. SELLER AGREES TO KEEP THE PROPERTY CONTINUALLY INSURED DURING THE TERM OF THIS AGREEMENT UNDER A POLICY OF FIRE AND EXTENDED COVERAGE INSURANCE WITH AN ACTUAL REPLACEMENT COST ENDORSEMENT.

7. OPERATION OF PROPERTY PRIOR TO CLOSING. UNTIL THE CLOSING DATE, SELLER SHALL HAVE THE FULL RESPONSIBILITY FOR THE CONTINUED OPERATION OF THE PROPERTY. PRIOR TO THE CLOSING DATE:

A. SELLER SHALL NOT CAUSE ANY NEW LIENS, CONTRACTS OR ENCUMBRANCES TO BE CREATED BY SELLER AGAINST THE PROPERTY;

B. SELLER SHALL CONTINUE TO COMPLY WITH ALL OF THE LANDLORD'S DUTIES AND OBLIGATIONS AS SET FORTH IN THE TENANT LEASE;

C. SELLER SHALL CONTINUE TO OPERATE, REPAIR, AND MAINTAIN THE PROPERTY IN THE SAME MANNER AS IT HAS PRIOR TO THE DATE OF THIS AGREEMENT.

8. REPRESENTATIONS AND WARRANTIES OF SELLER. IN ORDER TO INDUCE PURCHASER TO ENTER INTO THIS AGREEMENT AND PURCHASE THE PROPERTY, SELLER HEREBY REPRESENTS AND WARRANTS TO PURCHASER AS FOLLOWS:

A. NO ACTION IN CONDEMNATION, EMINENT DOMAIN OR PUBLIC TAKING PROCEEDINGS ARE NOW PENDING OR CONTEMPLATED AGAINST THE REAL PROPERTY;

B. NO ORDINANCE OR HEARING IS NOW BEFORE ANY LOCAL GOVERNMENTAL BODY WHICH EITHER CONTEMPLATES OR AUTHORIZES ANY PUBLIC IMPROVEMENTS OR SPECIAL TAX LEVIES, THE COST OF WHICH MAY BE ASSESSED AGAINST THE REAL PROPERTY. THERE ARE NO SPECIAL ASSESSMENTS CURRENTLY A LIEN AGAINST OR ENCUMBERING THE REAL PROPERTY;

C. SELLER HAS OR WILL HAVE AS OF THE DATE OF CLOSING GOOD AND MARKETABLE FEE SIMPLE TITLE INTEREST TO THE REAL PROPERTY;

D. TO THE BEST OF SELLER'S KNOWLEDGE, THE REAL PROPERTY AND THE IMPROVEMENTS ARE IN FULL COMPLIANCE WITH ALL ZONING AND BUILDING LAWS, INCLUDING, BUT NOT LIMITED TO, THE AMERICANS WITH DISABILITIES ACT OF 1990 AND ALL RULES AND REGULATIONS RELATING THERETO, AND THERE ARE NO NOTICES, ORDERS, SUITS, JUDGMENTS OR OTHER PROCEEDINGS RELATING TO FIRE, BUILDING, ZONING, AIR POLLUTION OR HEALTH VIOLATIONS THAT HAVE NOT BEEN CORRECTED. NO FIRE INSURANCE UNDERWRITER OR GOVERNMENTAL AUTHORITY HAS REQUESTED ANY ALTERATIONS OR ANY ADDITIONS TO THE PROPERTY;

E. THE PROPERTY WILL AS OF THE CLOSING DATE BE FREE AND CLEAR OF ALL LIENS, SECURITY INTERESTS, ALL ENCUMBRANCES, LEASES OR OTHER RESTRICTIONS OR OBJECTIONS TO TITLE EXCEPT AS PERMITTED BY THIS AGREEMENT;

F. TO THE BEST OF SELLER'S KNOWLEDGE, THE PROPERTY IS AND WILL BE IN GOOD REPAIR AND CONDITION ON THE CLOSING DATE. THE HEATING, VENTILATING, AIR CONDITIONING, PLUMBING AND ELECTRICAL SYSTEMS ARE IN GOOD WORKING ORDER AND REPAIR AND THE ROOF AND EXTERIOR WALLS OF THE IMPROVEMENTS ARE STRUCTURALLY SOUND AND FREE OF DEFECTS OR CRACKS. THERE ARE NO ITEMS OF DEFERRED MAINTENANCE OR REPAIR;

G. ALL LABOR OR MATERIALS WHICH HAVE BEEN FURNISHED TO THE PROPERTY HAVE BEEN FULLY PAID FOR OR WILL BE FULLY PAID FOR PRIOR TO THE CLOSING DATE SO THAT NO LIEN FOR LABOR OR MATERIALS RENDERED CAN BE ASSERTED AGAINST THE PROPERTY;

H. THE WATER SERVICE AND SEWER LINES AND SYSTEMS AVAILABLE TO AND SERVING THE PROPERTY HAVE ADEQUATE CAPACITY FOR CURRENT OPERATIONS FOR TRANSMISSION OF WATER, SANITARY AND STORM FLOWAGE, AND THE PROPERTY DOES NOT CONTAIN AND TO SELLER'S KNOWLEDGE HAS NOT EVER CONTAINED ANY UNDERGROUND STORAGE TANKS;

I. TO THE BEST OF SELLER'S KNOWLEDGE, ALL IMPROVEMENTS UPON THE REAL PROPERTY ARE WHOLLY WITHIN THE BOUNDARY LINES OF THE PROPERTY AND DO NOT ENCROACH UPON ANY ADJACENT PROPERTY AND NO IMPROVEMENTS ON ANY ADJACENT PROPERTY ENCROACH UPON THE REAL PROPERTY;

J. THE REAL PROPERTY IS IN COMPLIANCE WITH ALL SUBDIVISION AND PLATTING REGULATIONS AND SELLER HAS NOT RECEIVED ANY NOTICE OF VIOLATION OF APPLICABLE RULES, REGULATIONS, ORDINANCES, AND REQUIREMENTS OF EACH GOVERNMENTAL AUTHORITY HAVING JURISDICTION OVER THE PROPERTY, CONSTITUTES A SEPARATE TAX PARCEL OR PARCELS AND IS ZONED FOR ITS PRESENT USE WITHOUT VARIANCE, IS NOT A NON-CONFORMING USE AND MAY BE CONVEYED WITHOUT THE NECESSITY OF THE FILING OF A PLAT OR REPLAT OR SUBDIVISION OR RESUBDIVISION;

K. ALL SERVICE CONTRACTS AFFECTING THE PROPERTY ARE CANCELABLE WITHOUT PENALTY ON THIRTY (30) DAYS' NOTICE OR LESS;

L. THERE WILL BE NO PARTIES WITH RIGHTS TO POSSESSION TO THE PROPERTY AT CLOSING.

M. TO THE BEST OF SELLER'S KNOWLEDGE, THE EXISTING AND ALL PRIOR USES OF THE PROPERTY AND ITS EXISTING AND, TO THE BEST OF SELLER'S KNOWLEDGE, ALL PRIOR USES COMPLY AND HAVE AT ALL TIMES COMPLIED WITH, AND SELLER IS NOT IN VIOLATION OF AND HAS NOT VIOLATED, IN CONNECTION WITH ITS OWNERSHIP, USE, MAINTENANCE OR OPERATION OF THE PROPERTY AND THE CONDUCT OF THE BUSINESS RELATED THERETO, ANY APPLICABLE FEDERAL, STATE, COUNTY OR LOCAL STATUTES, LAWS, REGULATIONS, RULES, ORDINANCES, CODES, STANDARDS, ORDERS, LICENSES AND PERMITS OF ANY GOVERNMENTAL AUTHORITIES RELATING TO ENVIRONMENTAL MATTERS (BEING HEREINAFTER COLLECTIVELY REFERRED TO AS THE "ENVIRONMENTAL LAWS"), INCLUDING BY WAY OF ILLUSTRATION AND NOT BY WAY OF LIMITATION (A) THE CLEAN AIR ACT, THE FEDERAL WATER POLLUTION CONTROL ACT OF 1972, THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, THE TOXIC SUBSTANCES CONTROL ACT, OR THE MINNESOTA ENVIRONMENTAL RESPONSE AND LIABILITY ACT, (INCLUDING ANY AMENDMENTS OR EXTENSIONS THEREOF AND ANY RULES, REGULATIONS, STANDARDS OR GUIDELINES ISSUED PURSUANT TO ANY OF SAID ENVIRONMENTAL LAWS), AND (B) ALL OTHER APPLICABLE ENVIRONMENTAL STANDARDS OR REQUIREMENTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TO THE BEST OF SELLER'S KNOWLEDGE: (I) NEITHER SELLER, ITS AGENTS, EMPLOYEES AND INDEPENDENT CONTRACTORS NOR ANY TENANT, HAS OPERATED THE PROPERTY FOR THE PURPOSE OF RECEIVING, HANDLING, USING, STORING, TREATMENT, TRANSPORTING OR DISPOSING OF PETROLEUM PRODUCTS OR ANY HAZARDOUS MATERIAL AS DEFINED IN SAID ENVIRONMENTAL LAWS, OTHER TOXIC, DANGEROUS OR HAZARDOUS CHEMICALS, MATERIALS, SUBSTANCES, POLLUTANTS AND WASTES, OR ANY CHEMICAL, MATERIAL OR SUBSTANCE, EXPOSURE TO WHICH IS PROHIBITED, LIMITED OR REGULATED BY ANY FEDERAL, STATE, COUNTY, REGIONAL OR LOCAL AUTHORITY (ALL THE FOREGOING BEING HEREINAFTER COLLECTIVELY REFERRED TO AS "HAZARDOUS MATERIALS"); (II) THERE ARE NO EXISTING OR PENDING REMEDIAL ACTIONS OR OTHER WORK, REPAIRS, CONSTRUCTION OR CAPITAL EXPENDITURES WITH RESPECT TO THE PROPERTY IN CONNECTION WITH THE ENVIRONMENTAL LAWS, NOR HAS SELLER RECEIVED ANY NOTICE OF ANY OF THE SAME; (III) NO HAZARDOUS MATERIALS HAVE BEEN OR WILL BE RELEASED INTO THE ENVIRONMENT, OR HAVE BEEN OR WILL BE DEPOSITED, SPILLED, DISCHARGED, PLACED OR DISPOSED OF AT, ON, OR, TO THE BEST OF SELLER'S KNOWLEDGE, ADJACENT TO THE PROPERTY, NOR HAS THE PROPERTY BEEN USED AT ANY TIME BY ANY PERSON AS A LANDFILL OR A DISPOSAL SITE FOR HAZARDOUS MATERIALS OR FOR GARBAGE, WASTE OR REFUSE OF ANY KIND; (IV) THERE ARE NO ELECTRICAL TRANSFORMERS OR OTHER EQUIPMENT CONTAINING DIELECTRIC FLUID CONTAINING POLYCHLORINATED BIPHENYLS LOCATED IN, ON OR UNDER THE PROPERTY, NOR ARE THERE ANY ASBESTOS CONTAINING MATERIALS CONTAINED IN, ON OR UNDER THE PROPERTY; (V) THERE ARE NO LOCATIONS OFF THE PROPERTY WHERE HAZARDOUS MATERIALS GENERATED BY OR ON THE PROPERTY HAVE BEEN TREATED, STORED, DEPOSITED OR DISPOSED OF; (VI) TO THE BEST OF SELLER'S KNOWLEDGE, THERE IS NO FACT PERTAINING TO THE PHYSICAL CONDITION OF EITHER THE PROPERTY OR THE AREA SURROUNDING THE PROPERTY NOT DISCLOSED IN THE PROPERTY DATA AND WHICH MATERIALLY ADVERSELY AFFECTS OR WILL MATERIALLY ADVERSELY AFFECT THE PROPERTY OR THE USE OR ENJOYMENT OR THE VALUE THEREOF OR SELLER'S ABILITY TO PERFORM THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT; (VII) THE SALE OF THE PROPERTY BY SELLER TO PURCHASER DOES NOT REQUIRE NOTICE TO OR THE PRIOR APPROVAL, CONSENT OR PERMISSION OF ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AGENCY, BODY, BOARD OR OFFICIAL; (VIII) NO NOTICES OF ANY VIOLATION OF ANY OF THE MATTERS REFERRED TO IN THE FOREGOING SECTIONS RELATING TO THE PROPERTY OR ITS USE HAVE BEEN RECEIVED BY SELLER AND THERE ARE NO WRITS, INJUNCTIONS, DECREES, ORDERS OR JUDGMENTS OUTSTANDING, NO LAWSUITS, CLAIMS, PROCEEDINGS OR INVESTIGATIONS PENDING OR THREATENED, RELATING TO THE OWNERSHIP, USE, MAINTENANCE OR OPERATION OF THE PROPERTY, NOR IS THERE ANY BASIS FOR ANY SUCH LAWSUIT, CLAIM, PROCEEDING OR INVESTIGATION BEING INSTITUTED OR FILED.

THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 8 SHALL BE CONTINUING AND SHALL BE TRUE AND CORRECT ON AND AS OF THE CLOSING DATE WITH THE SAME FORCE AND EFFECT AS IF MADE AT THAT TIME AND ALL SUCH REPRESENTATIONS AND WARRANTIES SHALL SURVIVE CLOSING AND SHALL NOT BE AFFECTED BY ANY INVESTIGATION, VERIFICATION OR APPROVAL BY ANY PARTY HERETO OR BY ANYONE ON BEHALF OF ANY PARTY HERETO AND SHALL NOT MERGE INTO THE WARRANTY DEED BEING DELIVERED BY SELLER AT CLOSING. SELLER AGREES TO INDEMNIFY AND HOLD PURCHASER HARMLESS FROM AND AGAINST AND TO REIMBURSE PURCHASER WITH RESPECT TO ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LOSS, DAMAGE, LIABILITIES, AND COSTS (INCLUDING ATTORNEYS' FEES AND COURT COSTS) ASSERTED AGAINST OR INCURRED BY PURCHASER BY REASON OF OR ARISING OUT OF THE BREACH OF ANY REPRESENTATION OR WARRANTY AS SET FORTH IN THIS SECTION 8.

9. CONDITIONS PRECEDENT TO CLOSING. THE CLOSING OF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT AND ALL THE OBLIGATIONS OF PURCHASER UNDER THIS AGREEMENT ARE SUBJECT TO FULFILLMENT, ON OR BEFORE THE CLOSING DATE AS DEFINED IN THE ASSET PURCHASE AGREEMENT:

A. THE REPRESENTATIONS AND WARRANTIES MADE BY SELLER IN SECTION 8 SHALL BE CORRECT AS OF THE CLOSING DATE WITH THE SAME FORCE AND EFFECT AS IF SUCH REPRESENTATIONS AND WARRANTIES WERE MADE AT SUCH TIME. IT SHALL BE A CONDITION PRECEDENT TO CLOSING THAT ANY REPRESENTATIONS AND WARRANTIES MADE "TO THE BEST OF SELLER'S KNOWLEDGE" BY SELLER IN SECTION 8 SHALL BE CONSIDERED REPRESENTATIONS AND WARRANTIES THAT MUST BE TRUE AS OF THE DATE OF CLOSING AS DETERMINED BY PURCHASER'S OWN INDEPENDENT INVESTIGATIONS AND IF SUCH REPRESENTATIONS AND WARRANTIES ARE NOT TRUE, THEN PURCHASER SHALL NOT BE OBLIGATED TO CLOSE THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT;

B. THE STATUS AND MARKETABILITY OF TITLE SHALL HAVE BEEN ESTABLISHED TO PURCHASER'S SATISFACTION IN ACCORDANCE WITH SECTION 3;

C. ALL OF THE CONDITIONS TO THE OBLIGATIONS OF PURCHASER PURSUANT TO THIS AGREEMENT AND THE PARAGRAPH 5.2 OF THE ASSET PURCHASE AGREEMENT HAVE BEEN SATISFIED OR WAIVED BY PURCHASER; AND

D. ALL CONDITIONS PRECEDENT TO CLOSING ON THE ASSET PURCHASE AGREEMENT HAVE BEEN FULFILLED AND A CLOSING HAS OCCURRED BETWEEN SELLER AND BUYER PURSUANT TO THE ASSET PURCHASE AGREEMENT OR THE CLOSING OCCURRED SIMULTANEOUSLY WITH THE CLOSING ON THIS AGREEMENT.

IF PURCHASER IS UNABLE TO ATTAIN ALL DESIRED STRUCTURAL, MECHANICAL OR ENVIRONMENTAL REPORTS ON OR BEFORE THE CLOSING DATE, THE CLOSING DATE SHALL BE EXTENDED IN ACCORDANCE WITH THIS SECTION 9. THE CLOSING DATE SHALL BE EXTENDED TO BE COEXTENSIVE WITH THE TIME PERIOD(S) PROVIDED FOR THE CLOSING DATE PURSUANT TO THE ASSET PURCHASE AGREEMENT REFERRED TO ABOVE.

PURCHASER MAY ACKNOWLEDGE SATISFACTION OR WAIVER OF ANY OF THE FOREGOING CONDITIONS PRECEDENT, ONLY BY DELIVERING WRITTEN NOTICE OF SATISFACTION OR WAIVER TO SELLER ON OR BEFORE THE CLOSING DATE. IF PURCHASER DOES NOT ACKNOWLEDGE IN WRITING THE SATISFACTION OF ONE OR MORE OF THE FOREGOING CONDITIONS PRECEDENT (OR OTHERWISE WAIVE THE SAME IN WRITING) ON OR BEFORE THE CLOSING DATE AS THE SAME MAY BE EXTENDED, THEN, EXCEPT AS OTHERWISE PROVIDED IN SECTION 3, THIS AGREEMENT SHALL AUTOMATICALLY BE DEEMED TO BE TERMINATED, WITHOUT ACTION REQUIRED OF EITHER PARTY, THE EARNEST MONEY (AND ALL ACCRUED INTEREST) SHALL BE RETURNED TO PURCHASER, AND PURCHASER AND SELLER SHALL THEREAFTER BE RELEASED FROM ANY LIABILITY OR OBLIGATION HEREUNDER.

10. INTEGRATION. THE PARTIES ACKNOWLEDGE AND AGREE THAT ALL AGREEMENTS, DOCUMENTS, OBLIGATIONS AND TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT SHALL BE INTEGRATED. ACCORDINGLY, IF THERE SHALL BE A

DEFAULT, NONPERFORMANCE OR BREACH OF ANY OF THE SAME, OR ANY OBLIGATION EXISTS 30 DAYS AFTER NOTICE OF SUCH DEFAULT (FIVE DAYS IF FOR NONPAYMENT), NON-PERFORMANCE OR BREACH IS GIVEN TO THE PARTY COMMITTING THE SAME, THE SAME SHALL CONSTITUTE A MATERIAL BREACH OF ALL OBLIGATIONS AND ALL OF SUCH AGREEMENTS, DOCUMENTS, OBLIGATIONS AND TRANSACTION, ENTITLING SELLER, PURCHASER OR SELLER OR BUYER AS DEFINED IN THE ASSET PURCHASE AGREEMENT TO PURSUE ANY OR ALL AVAILABLE LEGAL REMEDIES AT LAW, IN EQUITY OR BY ANY OF SUCH AGREEMENTS. ALL REMEDIES SHALL BE CUMULATIVE AND THE FAILURE OR CHOICE BY SELLER, HOLMBERG OR PURCHASER TO EXERCISE ANY ONE OR MORE REMEDIES SHALL NOT PRECLUDE OR PREVENT THE LATER EXERCISE OF ANY SUCH REMEDIES FROM TIME TO TIME. THE PARTY COMMITTING SUCH DEFAULT, NONPERFORMANCE OR BREACH SHALL BE RESPONSIBLE FOR THE REASONABLE ATTORNEYS' FEES INCURRED BY THE OTHER PARTY AS A RESULT OF SUCH DEFAULT, NONPERFORMANCE OR BREACH, EVEN IF SUCH DEFAULT, NONPERFORMANCE OR BREACH IS SUBSEQUENTLY CURED.

11. PRE-CLOSING INSPECTION. IN ADDITION TO ALL OTHER RIGHTS OF INSPECTION CONTAINED HEREIN, PURCHASER SHALL HAVE THE RIGHT TO INSPECT THE PROPERTY DURING THE TWO (2) DAYS IMMEDIATELY PRECEDING THE CLOSING DATE TO VERIFY THAT ALL PERSONAL PROPERTY AND IMPROVEMENTS ARE STILL IN PLACE, AND ARE IN THE SAME OR BETTER CONDITION AS DURING PURCHASER'S PREVIOUS INSPECTIONS, REASONABLE WEAR AND TEAR EXCEPTED.

IN THE EVENT ANY PERSONAL PROPERTY OR IMPROVEMENTS ARE NOT IN SUCH CONDITION, PURCHASER SHALL PROMPTLY NOTIFY SELLER, AND SELLER SHALL, AT ITS OPTION, EITHER: (I) CAUSE THE PROPERTY TO BE RESTORED TO SUCH CONDITION AS SOON AS PRACTICABLE; OR (II) ALLOW PURCHASER AN EQUITABLE ADJUSTMENT TO THE PURCHASE PRICE IN CASH. SELLER SHALL MAKE SUCH ELECTION ON THE CLOSING DATE.

12. CLOSING, POSSESSION. SUBJECT TO THE FULFILLMENT OR WAIVER OF THE CONDITIONS PRECEDENT, AND PROVIDED THAT ALL OF THE COVENANTS, REPRESENTATIONS AND WARRANTIES OF SELLER ARE TRUE AND CORRECT ON THE CLOSING DATE AS THOUGH MADE ON SUCH DATE, THE CLOSING OF THE PURCHASE AND SALE SHALL TAKE PLACE ON THE SAME DATE AS PROVIDED FOR IN THE ASSET PURCHASE AGREEMENT (THE "CLOSING DATE"). THE CLOSING SHALL TAKE PLACE AT THE OFFICES OF PURCHASER'S COUNSEL AT 1800 FIFTH STREET TOWERS, 150 SOUTH FIFTH STREET, MINNEAPOLIS, MINNESOTA 55402 OR SUCH OTHER PLACE AS SELLER AND PURCHASER MAY MUTUALLY DETERMINE. POSSESSION SHALL BE DELIVERED ON THE CLOSING DATE.

13. SELLER'S OBLIGATIONS AT CLOSING. AT OR PRIOR TO THE CLOSING DATE, SELLER SHALL:

A. DELIVER TO PURCHASER A DULY RECORDABLE GENERAL WARRANTY DEED TO THE REAL PROPERTY (IN A FORM SATISFACTORY TO PURCHASER AND THE TITLE COMPANY) CONVEYING TO PURCHASER MARKETABLE FEE SIMPLE TITLE TO THE REAL PROPERTY AND ALL RIGHTS APPURTENANT THERETO SUBJECT ONLY TO EXCEPTIONS NOT OBJECTED TO BY PURCHASER;

B. CAUSE TO BE FURNISHED AND DELIVERED TO PURCHASER AT THE SOLE COST AND EXPENSE OF SELLER THE UPDATED ABSTRACT OR THE TITLE POLICY IN CONFORMITY WITH PURCHASER'S TITLE REQUIREMENTS;

C. DELIVER TO PURCHASER A WARRANTY BILL OF SALE (IN A FORM SATISFACTORY TO PURCHASER) CONVEYING THE PERSONAL PROPERTY TO SELLER;

D. DELIVER TO PURCHASER AND THE TITLE COMPANY AN AFFIDAVIT SUFFICIENT TO REMOVE ANY EXCEPTION IN THE TITLE POLICY FOR MECHANICS' AND MATERIALMEN'S LIENS AND PARTIES IN POSSESSION;

- E. DELIVER TO PURCHASER AN ASSIGNMENT OF ANY SERVICE CONTRACTS (IN A FORM SATISFACTORY TO PURCHASER) WHICH PURCHASER ELECTS TO HAVE ASSIGNED TO IT;
- F. DELIVER TO PURCHASER AN ASSIGNMENT OF ALL PERMITS, LICENSES, WARRANTIES AND CONTRACT RIGHTS (IN A FORM SATISFACTORY TO PURCHASER) RELATING TO THE PROPERTY AND NOT COVERED BY OTHER DOCUMENTS OF ASSIGNMENT;
- G. DELIVER TO PURCHASER A CERTIFICATION (FIRPTA CERTIFICATION) CONFIRMING THAT SELLER IS NOT A FOREIGN CORPORATION WITHIN THE MEANING OF SECTION 1445 OF THE INTERNAL REVENUE CODE;
- H. DELIVER TO PURCHASER A COPY OF ALL TERMINATION AND TRANSFER LETTERS DELIVERED BY SELLER TO ALL SERVICE PROVIDERS WHOSE AGREEMENTS OR CONTRACTS ARE LONGER THAN THIRTY (30) DAYS AND WHICH ARE BEING TERMINATED WHICH LETTERS SHALL PROVIDE FOR TERMINATION EFFECTIVE AS OF THE CLOSING DATE;
- I. DELIVER TO PURCHASER A SIGNED COPY OF THE FORM OF ALL TRANSFER LETTERS PROVIDED BY PURCHASER TO BE DELIVERED TO ALL UTILITY PROVIDERS;
- J. DELIVER TO PURCHASER A CERTIFICATE DATED THE CLOSING DATE AND SIGNED BY THE SELLER REAFFIRMING THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT FOR THE PURPOSE OF VERIFYING THE ACCURACY OF SUCH REPRESENTATIONS AND WARRANTIES AND THE PERFORMANCE AND SATISFACTION OF SUCH COVENANTS AND CONDITIONS;
- K. DELIVER TO PURCHASER AN OPINION OF SELLER'S OUTSIDE COUNSEL, STATING THAT SELLER HAS THE POWER AND AUTHORITY TO EXECUTE AND DELIVER THIS AGREEMENT AND ALL OF THE DOCUMENTS REFERRED TO IN THIS SECTION, THAT THE PERSONS EXECUTING SUCH DOCUMENTS ARE AUTHORIZED TO DO SO WITHOUT THE CONSENT OF ANY OTHER PARTY, AND THAT UPON THEIR EXECUTION SUCH DOCUMENTS SHALL BE FULLY BINDING ON SELLER;
- L. DELIVER TO PURCHASER ALL DOCUMENTS AND APPROVALS REQUIRED PURSUANT TO THE ASSET PURCHASE AGREEMENT;
- M. DELIVER TO PURCHASER SUCH OTHER DOCUMENTS AS MAY BE REASONABLY REQUIRED BY THIS AGREEMENT, ALL IN A FORM SATISFACTORY TO PURCHASER.

14. DELIVERY OF PURCHASE PRICE; OBLIGATIONS AT CLOSING. AT CLOSING, AND SUBJECT TO THE TERMS, CONDITIONS, AND PROVISIONS HEREOF AND THE PERFORMANCE BY SELLER OF ITS OBLIGATIONS AS SET FORTH HEREIN, THE EARNEST MONEY SHALL BE DELIVERED TO SELLER (EXCEPT ANY INTEREST ACCRUED THEREON) AND PURCHASER SHALL DELIVER THE BALANCE OF THE PURCHASE PRICE TO SELLER PURSUANT TO SECTION 2 ABOVE.

15. CLOSING COSTS. THE FOLLOWING COSTS AND EXPENSES SHALL BE PAID AS FOLLOWS IN CONNECTION WITH THE CLOSING:

A. SELLER SHALL PAY OR REIMBURSE PURCHASER FOR:

I. THE COSTS OF ALL EVIDENCE OF TITLE, INCLUDING THE COST OF THE SURVEY AND THE TITLE INSURANCE PREMIUM IN CONNECTION WITH THE ISSUANCE OF THE TITLE POLICY IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 3, AND THE FEES AND COSTS SET FORTH IN SECTION 2, IF ANY;

II. THE STATE DEED TAX OR TRANSFER FEE IMPOSED ON THE CONVEYANCE;

III. A PRORATA PORTION OF ALL UTILITIES AND TAXES AS PROVIDED BELOW;

IV. ALL SPECIAL ASSESSMENTS WHETHER LEVIED, PENDING OR ASSESSED;

B. PURCHASER SHALL PAY THE FOLLOWING COSTS IN CONNECTION WITH THE CLOSING:

I. THE DOCUMENTARY FEE NECESSARY TO RECORD THE DEED;

II. THE UNEARNED PORTION OF ANY PREMIUMS PAID ON INSURANCE POLICIES WHICH PURCHASER ELECTS TO ASSUME;

III. THE UNEARNED PORTIONS OF ANY PAYMENTS PREPAID ON ANY SERVICE CONTRACTS PURCHASER ELECTS TO ASSUME;

IV. ANY FEES AND EXPENSES ASSOCIATED WITH RECORDING THE PURCHASE MONEY MORTGAGE AND UCC-2 FINANCING STATEMENT;

V. THE BROKERAGE FEE OF THE BROKER INVOLVED IN ARRANGING THE SALE.

16. PRORATIONS. THE FOLLOWING PRORATIONS SHALL BE MADE AS OF THE CLOSING DATE:

A. REAL ESTATE TAXES SHALL BE PRORATED ON THE DATE OF CLOSING BASED ON THE YEAR IN WHICH THEY ARE PAYABLE;

B. ALL UTILITIES FURNISHED TO THE PROPERTY;

C. ALL INCOME OF THE PROPERTY.

MOST EXPENSES SHALL BE PRORATED AT CLOSING BASED ON ACTUAL BILLS OR ESTIMATES. THOSE EXPENSE ITEMS FOR WHICH ACTUAL BILLS WERE NOT AVAILABLE AT CLOSING WILL BE ADJUSTED WITHIN SIXTY (60) DAYS OF CLOSING BASED UPON THE ACTUAL BILLS.

**EACH PARTY SHALL PAY ITS OWN LEGAL FEES AND OTHER EXPENSES IN CONJUNCTION WITH CLOSING.**

17. EMPLOYEES. SELLER SHALL BE SOLELY RESPONSIBLE FOR PAYMENT OF ANY AND ALL WAGES, SALARIES, VACATION AND/OR SICK LEAVE COMPENSATION, PENSIONS OR PROFIT SHARING BENEFITS AND OTHER BENEFITS OR COMPENSATION INURING TO THE BENEFIT OF ANY AND ALL EMPLOYEES OF SELLER EMPLOYED AT THE PROPERTY, AND ALL SUCH EMPLOYEES SHALL BE TERMINATED BY SELLER EFFECTIVE AS OF THE CLOSING DATE.

18. BROKERAGE. SELLER AND PURCHASER REPRESENT AND WARRANT TO EACH OTHER THAT THEY HAVE NOT ENGAGED THE SERVICES OF ANY BROKER IN CONNECTION WITH THE SALE AND PURCHASE CONTEMPLATED BY THIS AGREEMENT, EXCEPT THAT PURCHASER HAS ENGAGED THE SERVICES OF GILBERT KOPOLOW AND ASSOCIATE INVESTMENTS, WHICH SERVICES PURCHASER AGREES TO PAY AT THE TIME OF CLOSING. SELLER HEREBY AGREES TO INDEMNIFY AND HOLD PURCHASER HARMLESS FOR ANY CLAIM (INCLUDING REASONABLE EXPENSES INCURRED IN DEFENDING SUCH CLAIM) MADE BY A BROKER OR SALES AGENT OR SIMILAR PARTY RETAINED BY SELLER IN CONNECTION WITH THIS TRANSACTION.

19. REMEDIES. IF SELLER DEFAULTS IN THE PERFORMANCE OF THIS AGREEMENT, PURCHASER SHALL HAVE THE



RIGHT TO TERMINATE THIS AGREEMENT UPON WRITTEN NOTICE TO SELLER, IN WHICH EVENT THE EARNEST MONEY (PLUS ANY ACCRUED INTEREST) SHALL BE RETURNED TO PURCHASER (NOT MORE THAN FIVE (5) BUSINESS DAYS AFTER WRITTEN NOTICE TO SELLER) AND SELLER SHALL REIMBURSE PURCHASER FOR THE COSTS OF THE TITLE COMMITMENT AND SURVEY INCURRED BY PURCHASER. IF SELLER DEFAULTS IN THE PERFORMANCE OF THIS AGREEMENT AND PURCHASER DOES NOT TERMINATE THIS AGREEMENT, SELLER ACKNOWLEDGES THAT THE PROPERTY IS UNIQUE AND THAT MONEY DAMAGES TO PURCHASER IN THE EVENT OF DEFAULT BY SELLER ARE INADEQUATE. ACCORDINGLY, IN SUCH EVENT THE EARNEST MONEY SHALL BE IMMEDIATELY RETURNED TO PURCHASER AND PURCHASER SHALL HAVE THE RIGHT TO SEEK ANY OTHER RELIEF AVAILABLE AT LAW, AND IN ADDITION TO ANY OTHER REMEDY AVAILABLE AT LAW, TO APPLY FOR AND TO RECEIVE FROM A COURT OF COMPETENT JURISDICTION EQUITABLE RELIEF BY WAY OF RESTRAINING ORDER, INJUNCTION OR OTHERWISE, PROHIBITORY OR MANDATORY, TO PREVENT A BREACH OF THE TERMS OF THIS AGREEMENT, OR BY WAY OF SPECIFIC PERFORMANCE TO ENFORCE PERFORMANCE OF THE TERMS OF THIS AGREEMENT OR RESCISSION, PLUS REIMBURSEMENT FOR COSTS, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED IN THE SECURING OF SUCH RELIEF. THIS RIGHT TO EQUITABLE RELIEF SHALL NOT BE CONSTRUED TO BE IN LIEU OF OR TO PRECLUDE PURCHASER'S RIGHT TO SEEK A REMEDY AT LAW. IF PURCHASER DEFAULTS IN THE PERFORMANCE OF THIS AGREEMENT, SELLER'S SOLE AND EXCLUSIVE REMEDY SHALL BE TO TERMINATE THIS AGREEMENT BY WRITTEN NOTICE TO PURCHASER, IN WHICH EVENT ESCROW AGENT SHALL DELIVER FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) OF THE EARNEST MONEY TO SELLER AS LIQUIDATED DAMAGES WITH THE REMAINDER OF THE EARNEST MONEY, TOGETHER WITH ALL ACCRUED INTEREST TO BE RETURNED TO PURCHASER.

20. ACCEPTANCE. THIS AGREEMENT SHALL NOT BE EFFECTIVE UNLESS THE ASSET PURCHASE AGREEMENT HAS ALSO BEEN EXECUTED BY ALL PARTIES THERETO.

21. MUTUAL INDEMNIFICATION. SELLER AND PURCHASER AGREE TO INDEMNIFY EACH OTHER AGAINST, AND HOLD EACH OTHER HARMLESS FROM, ALL LIABILITIES (INCLUDING REASONABLE ATTORNEYS' FEES IN DEFENDING AGAINST CLAIMS) ARISING OUT OF THE OWNERSHIP, OPERATION OR MAINTENANCE OF THE PROPERTY FOR THEIR RESPECTIVE PERIOD OF OWNERSHIP. SUCH RIGHTS TO INDEMNIFICATION WILL NOT ARISE TO THE EXTENT THAT (A) THE PARTY SEEKING INDEMNIFICATION ACTUALLY RECEIVES INSURANCE PROCEEDS OR OTHER CASH PAYMENTS DIRECTLY ATTRIBUTABLE TO THE LIABILITY IN QUESTION (NET OF THE COST OF COLLECTION, INCLUDING REASONABLE ATTORNEYS' FEES); OR (B) THE CLAIM FOR INDEMNIFICATION ARISES OUT OF THE ACT OR NEGLIGENCE OF THE PARTY SEEKING INDEMNIFICATION. IF AND TO THE EXTENT THAT THE INDEMNIFIED PARTY HAS INSURANCE COVERAGE, OR THE RIGHT TO MAKE A CLAIM AGAINST ANY THIRD PARTY FOR ANY AMOUNT TO BE INDEMNIFIED AGAINST AS SET FORTH ABOVE, THE INDEMNIFIED PARTY WILL, UPON FULL PERFORMANCE BY THE INDEMNIFYING PARTY OF ITS INDEMNIFICATION OBLIGATIONS, ASSIGN SUCH RIGHTS TO THE INDEMNIFYING PARTY OR, IF SUCH RIGHTS ARE NOT ASSIGNABLE, THE INDEMNIFIED PARTY WILL DILIGENTLY PURSUE SUCH RIGHTS BY APPROPRIATE LEGAL ACTION OR PROCEEDING AND ASSIGN THE RECOVERY AND/OR RIGHT OF RECOVERY TO THE INDEMNIFYING PARTY TO THE EXTENT OF THE INDEMNIFICATION PAYMENT MADE BY SUCH PARTY.

22. MISCELLANEOUS. THE FOLLOWING GENERAL PROVISIONS GOVERN THIS AGREEMENT.

A. NO WAIVERS. THE WAIVER BY EITHER PARTY HERETO OF ANY CONDITION OR THE BREACH OF ANY TERM, COVENANT OR CONDITION HEREIN CONTAINED SHALL NOT BE DEEMED TO BE A WAIVER OF ANY OTHER CONDITION OR OF ANY SUBSEQUENT BREACH OF THE SAME OR OF ANY OTHER TERM, COVENANT OR CONDITION HEREIN CONTAINED. PURCHASER, IN ITS SOLE DISCRETION MAY WAIVE ANY RIGHT CONFERRED UPON PURCHASER BY THIS AGREEMENT; PROVIDED THAT SUCH WAIVER SHALL ONLY BE MADE BY PURCHASER GIVING SELLER WRITTEN NOTICE SPECIFICALLY DESCRIBING THE RIGHT WAIVED.

B. TIME OF ESSENCE. TIME IS OF THE ESSENCE OF THIS AGREEMENT.

C. SURVIVAL. ALL REPRESENTATION, WARRANTIES AND AGREEMENT OF THE PARTIES SET FORTH HEREIN

**SHALL SURVIVE THE CLOSING.**

D. GOVERNING LAW. THIS AGREEMENT IS MADE AND EXECUTED UNDER AND IN ALL RESPECTS TO BE GOVERNED AND CONSTRUED BY THE LAWS OF THE STATE OF MINNESOTA AND THE PARTIES HERETO HEREBY AGREE AND CONSENT AND SUBMIT THEMSELVES TO ANY COURT OF COMPETENT JURISDICTION SITUATED IN THE STATE OF MINNESOTA.

E. NOTICES. ALL NOTICES AND DEMANDS GIVEN OR REQUIRED TO BE GIVEN BY ANY PARTY HERETO TO ANY OTHER PARTY SHALL BE DEEMED TO HAVE BEEN PROPERLY GIVEN IF AND WHEN DELIVERED IN PERSON, SENT BY TELEGRAM (WITH VERIFICATION OF RECEIPT), SENT BY FACSIMILE (WITH VERIFICATION OF RECEIPT) OR THREE (3) BUSINESS DAYS AFTER HAVING BEEN DEPOSITED IN ANY U.S. POSTAL SERVICE AND SENT BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, ADDRESSED AS FOLLOWS (OR SENT TO SUCH OTHER ADDRESS AS ANY PARTY SHALL SPECIFY TO THE OTHER PARTY PURSUANT TO THE PROVISIONS OF THIS SECTION):

IF TO SELLER:	LARRY A. HOLMBERG AMUSEMENT CENTER, INC. 300 SOUTH THIRD STREET MINNEAPOLIS, MINNESOTA 55415 FACSIMILE:
COPY TO:	SAUL BERNICK, ESQ. BERNICK & LIFSON, P.A. 5500 WAYZATA BOULEVARD, SUITE 1200 MINNEAPOLIS, MINNESOTA 55416 FACSIMILE: (612) 546-1003
IF TO PURCHASER:	MR. ROBERT L. WATTERS RICK'S CABARET INTERNATIONAL, INC. 3113 BERING DRIVE HOUSTON, TEXAS 77057 FACSIMILE: (713) 785-2593
COPY TO:	JOHN W. LANG, ESQ. MESSERLI & KRAMER P.A. 1800 FIFTH STREET TOWERS 150 SOUTH FIFTH STREET MINNEAPOLIS, MINNESOTA 55402-4218 FACSIMILE: (612) 672-3777
COPY TO:	ROBERT D. AXELROD, ESQ. AXELROD, SMITH & KIRSHBAUM 5300 MEMORIAL DRIVE SUITE 700 HOUSTON, TEXAS 77007-8292 FACSIMILE: (713) 552-0202

IN THE EVENT EITHER PARTY DELIVERS A NOTICE BY FACSIMILE, AS SET FORTH ABOVE, SUCH PARTY AGREES TO DEPOSIT THE ORIGINALS OF THE NOTICE IN A POST OFFICE, BRANCH POST OFFICE, OR MAIL DEPOSITORY MAINTAINED BY THE U.S. POSTAL SERVICE, POSTAGE PREPAID AND ADDRESSED AS SET FORTH ABOVE. SUCH DEPOSIT IN THE U.S. MAIL SHALL NOT AFFECT THE DEEMED DELIVERY OF THE NOTICE BY FACSIMILE, PROVIDED THAT THE PROCEDURES SET FORTH ABOVE ARE FULLY COMPLIED WITH. ANY PARTY, BY NOTICE GIVEN AS AFORESAID, MAY CHANGE THE ADDRESS TO WHICH SUBSEQUENT NOTICES ARE TO BE SENT TO SUCH PARTY;

F. SUCCESSORS AND ASSIGNS. THIS AGREEMENT SHALL BE BINDING UPON AND INURE TO THE BENEFIT OF THE SUCCESSORS AND ASSIGNS OF EACH OF THE PARTIES HERETO;

G. INVALIDITY. IF FOR ANY REASON ANY TERM OR PROVISION OF THIS AGREEMENT SHALL BE DECLARED VOID AND UNENFORCEABLE BY ANY COURT OF LAW OR EQUITY IT SHALL ONLY AFFECT SUCH PARTICULAR TERM OR PROVISION OF THIS AGREEMENT AND THE BALANCE OF THIS AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT AND SHALL BE BINDING UPON THE PARTIES HERETO;

H. COMPLETE AGREEMENT. ALL UNDERSTANDINGS AND AGREEMENTS HERETOFORE HAD BETWEEN THE PARTIES ARE MERGED INTO THIS AGREEMENT WHICH ALONE FULLY AND COMPLETELY EXPRESSES THEIR AGREEMENT. THIS AGREEMENT MAY BE CHANGED ONLY IN WRITING SIGNED BY BOTH OF THE PARTIES HERETO AND SHALL APPLY TO AND BIND THE SUCCESSORS AND ASSIGNS OF EACH OF THE PARTIES HERETO AND SHALL NOT MERGE WITH THE DEED DELIVERED TO PURCHASER AT CLOSING;

I. ATTORNEYS' FEES AND COSTS. IN THE EVENT OF ANY LITIGATION ARISING OUT OF BREACH OR CLAIMED BREACH OF THIS AGREEMENT, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER FROM THE OTHER ALL COSTS AND EXPENSES INCURRED IN CONNECTION THEREWITH, INCLUDING ATTORNEYS' FEES AND COSTS.

J. COUNTERPARTS. THIS AGREEMENT MAY BE EXECUTED IN ANY NUMBER OF COUNTERPARTS, WHICH TAKEN TOGETHER SHALL CONSTITUTE ONE AND THE SAME INSTRUMENT AND EACH OF WHICH SHALL BE CONSIDERED AN ORIGINAL FOR ALL PURPOSES.

**IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT AS**

**OF THE DATE AND YEAR FIRST ABOVE WRITTEN.**

**SELLER**

*/s/LARRY HOLMBERG*

-----  
*LARRY HOLMBERG*

**PURCHASER**

**RICK'S CABARET INTERNATIONAL, INC.**

*BY: /s/ ROBERT L. WATTERS*

-----  
*ITS: PRESIDENT*

## **EXHIBIT A**

### **Legal Description**

That part of Lots 1 and 2, Block 49, Town of Minneapolis described as follows: Commencing at the most Westerly corner of said Block and running thence Southeasterly along the Northeasterly line of Third Street South in said City of Minneapolis, a distance of 118.31 feet to the Northwesterly line of the alley comprising the Southeasterly 14 feet front and rear of Lot 2; thence at right angles Northeasterly parallel to the Southeasterly line of Third Avenue South and along the Northwesterly line of said alley a distance of 67 feet; thence at right angles on a line parallel to and 67 feet from the Northeasterly line of Third Street South, a distance of 118.31 feet to the Southeasterly line of Third Avenue South; thence at right angles Southwesterly along the Southeasterly line of Third Avenue South 67 feet to the point of commencement, the four corners of which said tract of land have been established and marked by Judicial Landmarks, according to the plat thereof on file or of record in the office of the Register of Deeds in and for said County.

Subject to a confirmatory of that certain party wall agreement made and entered into on the first of September, 1881, by and between Stephen A. Bemis and Judson M. Bemis on the one part and Leonard Paille on the other part and recorded in the office of the Register of Deeds in and for Hennepin County, Minnesota on the 22nd day of December, 1881 in Book 12 of Miscellaneous at page 220.

**EXHIBIT 10.3**  
**AMENDMENT TO ASSET PURCHASE AGREEMENT**  
**AMENDMENT TO EARNEST MONEY CONTRACT**

The parties to this Agreement ("Amendments") made this 4th day of August, 1997, are as follows:

LARRY A. HOLMBERG ("Holmberg" under the Asset Purchase Agreement and "Seller" under the Earnest Money Contract); AMUSEMENT CENTER, INC., a Minnesota Corporation ("Amusement Center", and collectively referred to as "Seller" with BUNS & ROSES II, INC., under the Asset Purchase Agreement); "BUNS & ROSES II, INC., a Minnesota Corporation ("B&R II" and collectively referred to as "Seller" with Amusement Center, Inc., in the Asset Purchase Agreement); RICK'S CABARET INTERNATIONAL, INC., a Texas Corporation, ("Buyer" under the Asset Purchase Agreement; "Purchaser" under the Earnest Money Contract); and RCI ENTERTAINMENT (MINNESOTA), INC., a Minnesota Corporation ("RCI") a wholly owned subsidiary of Rick's Cabaret International, Inc., and its designee to acquire all of the assets under the Asset Purchase Agreement and Earnest Money Contract.

WHEREAS, the various parties have entered into a certain Asset Purchase Agreement dated the 24th day of December, 1996, and a certain Earnest Money Contract dated the 24th day of December, 1996; and

WHEREAS, the parties contemplated a combined closing under those Agreements on or about July 31, 1997, which combined closing did not occur; and

WHEREAS, the parties desire to amend the Asset Purchase Agreement and the Earnest Money Contract provide for the subsequent combined closing.

NOW, THEREFORE, in consideration of promises and mutual covenants contained herein, the parties agree as follows:

**ARTICLE I.**  
**EXPLANATION OF AMENDMENTS**

A. The parties agree that the total Purchase Price of \$3,000,000.00 remains unchanged. That all the terms and conditions of the original Asset Purchase Agreement and Earnest Money Contract shall be in full force and effect unless changed by these Amendments. These Amendments shall supersede and replace the terms of the Asset Purchase Agreement and Earnest Money Contract.

1. The downpayment, however allocated between the Purchased Assets and the Property should be as follows:

(i) \$50,000.00 to be dispersed from the Escrow Agreement to Holmberg on the execution of these Amendments by all parties;

(ii) \$150,000.00 to be paid to Holmberg at the time of Closing on the sale of Purchased Assets and Property;

(iii) 80,000 shares of common stock of Rick's Cabaret International, Inc., issued to Holmberg at the time of Closing;

(iv) The total value of the downpayment shall be \$300,000.00.

2. \$200,000.00 of the purchase price shall be paid by Buyer's execution and delivery of a Promissory Note to be executed at Closing in the amount of \$200,000.00 amortized over 18 months, bearing interest at the rate of 10% per annum payable in 17 equal monthly installments of principal and interest, and a final balloon payment due on the 18th monthly installment payment. The \$200,000.00 Promissory Note will be secured by all the collateral securing any and all other indebtedness owned from the Buyer/Purchaser to any of the Sellers.

3. The remaining \$2,500,000.00 of the purchase price shall be paid according to the terms of the Asset Purchase Agreement and Earnest Money Contract.

4. The allocation of the Purchase Price of the Purchased Assets shall be pursuant to an appraisal obtained, prior to closing, by the Buyer/Purchaser as allocated between the tangible personal property and goodwill. The allocation of the Purchase Price for the Property shall remain at \$750,000.00.

5. The Closing, as contemplated by the parties, shall be on or before October 31, 1997.

6. Following the execution of these Amendments, Buyer/Purchaser shall be permitted to commence construction or improvements of the building for dressing rooms in the basement and a kitchen on the ground floor following completion of the dressing rooms. All such construction and improvements shall be at the expense of Buyer/Purchaser and such constructions and improvements shall not commence until the Sellers have been provided with certificates of insurance providing general comprehensive liability insurance and coverage of not less than \$1,000,000.00 per occurrence and per person and fire and extended coverages in an amount not less than \$750,000.00. Such certificate shall be specified through all policies of insurance in effect and shall not be canceled except upon ten (10) days prior written notice to Sellers, and all

policies of insurance shall name Sellers as an additional insured thereunder. Buyer/Purchaser shall obtain the consent of Holmberg for all such construction and improvements, which consent shall not unreasonably withheld. Prior to the beginning of any construction or improvements, Buyer/Purchaser shall establish an escrow construction fund and deposit all funds required to pay for the construction or improvements contemplated. Holmberg's written consent shall be required for any disbursements from the escrow account. Buyer/Purchaser shall produce appropriate lien waivers prior to disbursement.

B. Nothing contained in these Amendments or the original Asset Purchase Agreement and Earnest Money Contract shall prevent the Buyer/Purchaser from prepaying any amount due thereunder; however, until all the obligations of Buyer/Purchaser to Seller are paid or performed according to the terms of the various Agreements, Buyer/Purchaser shall not be provided with any satisfaction, release, or termination of any and all mortgages, security agreements, and notes. It is further agreed that Buyer/Purchaser may not sell, assign, or transfer its interest (other than to RCI), and cannot dispose of any of the assets, other than in the ordinary course of business, without all of the obligations due to Sellers being performed or paid in full.

## **ARTICLE II. CHANGES IN THE ASSET PURCHASE AGREEMENT**

A. As set forth in Article I., of these Amendments the changes, additions, and deletions in the Asset Purchase Agreement dated December 24, 1996, are as follows:

1. RCI, the wholly owned subsidiary of Rick's Cabaret International, Inc., shall be the "Buyer", and all the closing documents should be amended to reflect this change. Rick's Cabaret International, Inc., shall guarantee and remain liable for all the obligations of RCI.
2. 1.3(i) is amended to provide that the downpayment is changed as set forth in Article I. to provide for \$50,000.00 Earnest Money at the time of execution of these Amendments as provided for in Article III. A. 2. (a); \$150,000.00 payable by cashiers check, certified funds, or wire transfer at Closing; 80,000 shares of common stock of Rick's Cabaret

International, Inc., with a value assigned to those shares of \$100,000,00; and a note from Rick's Cabaret International, Inc., payable to Holmberg amortized and payable over 18 months, bearing interest at the rate of 10% per annum, with the first payment due 30 days after Closing.

3. 1.4 is deleted and replaced as follows: "In the event there is no Closing, based upon this Agreement or the Earnest Money Contract, being canceled or terminated by Buyer, Holmberg shall retain the \$50,000.00 Earnest Money released and paid to Holmberg as liquidated damages, which shall be the sole and exclusive remedy of Holmberg, Amusement Center, and B&R II, except that the Seller shall not be required to reimburse Buyer/Purchaser for any remodeling done prior to Closing."

4. 1.6 shall be amended to read:

"The Purchase Price of the Property shall be \$750,000.00. The Purchase Price of the Purchased Assets shall be allocated among the Purchased Assets in accordance with the schedule which shall be agreed upon and signed by all the parties prior to the Closing Date following an appraisal by the Buyer."

5. 3.1 is amended to refer to "Buyer" as Rick's Cabaret International, Inc., and a new sentence should be added identical to the first regarding RCI Entertainment (Minnesota), Inc., a Minnesota corporation.

6. The following statement should be added to Paragraph 4.1:

"Effective July 19, 1997, the City of Minneapolis approved an On-Sale Liquor Class A with Sunday Sales License."

7. Subparagraph (h) of Paragraph 5.1 should be amended to add the following:

". . . , except for existing litigation filed by Robert W. Sabes and Classic Affairs, Inc., or any other action filed by Sabes or a related party."

8. Subparagraphs (e), and (j) of Paragraph 5.2 shall be deleted.

9. 6.1 shall be deleted and replaced as follows:

"The Closing of the transactions provided for in this Agreement ("Closing") shall be held at the offices of Messerli & Kramer P.A., 1800 Fifth Street Towers, Minneapolis, Minnesota, 55402, commencing at 10:00 a.m. central daylight time on October 31, 1997, unless an earlier Closing date is requested by Buyer with at least five (5) business days written notice of such earlier date. The day on which the Closing occurs is referred to herein as the "Closing Date."



10. 6.4 is amended to delete Subparagraphs (a) and (b) and to relist Subparagraphs (c) through (h) as Subparagraphs (d) through (i). New Subparagraphs (a) through (c) are as follows:

- (a) \$150,000.00 payable by certified check, bank check, or "Fed Funds" wire transfer;
- (b) Promissory Note from Rick's Cabaret International, Inc., in the amount of \$200,000.00 in the form to be provided at Closing amortized and payable over 18 months, bearing interest at the rate of 10% per annum;
- (c) 80,000 shares of common stock of Rick's Cabaret International, Inc., registered in the name of Holmberg;

11. A new Paragraph 6.5 shall be added:

"6.5. HOLMBERG'S RIGHTS REGARDING THE COMMON STOCK. Holmberg shall have the right to demand sixty (60) days after the Closing Date of the Agreement that Rick's Cabaret International, Inc., file a Registration Statement of Form S-3 (or if S-3 is not available on any other available form) with the Securities and Exchange Commission ("Commission") under the Securities Act of 1933, as amended ("the Act"), which, when effective, will permit the resale of the shares of common stock issued to Holmberg pursuant to this Agreement. Rick's Cabaret International, Inc., shall cause to be filed with the Commission, as soon as practical after demand is made by Holmberg, the Registration Statement and shall use its best efforts to cause the Registration Statement to become effective as soon thereafter as practical and will maintain such effectiveness for a period of one (1) year from the Closing Date.

12. A new Paragraph 6.6 shall be added:

"6.6 FAILURE TO CLOSE. In the event that Buyer fails or refuses to close the transactions contemplated by this Agreement or the Earnest Money Contract, then Holmberg shall retain the \$50,000.00 previously released and paid to Holmberg on August 4, 1997 as liquidated damages, which shall be the sole and exclusive remedy of Holmberg, Amusement Center and/or B & R II, except that Sellers shall not have to reimburse Buyer for any improvements made by Buyer to the Property before Closing. In the event that Holmberg, Amusement Center or B & R II fail or refuse to close the transactions contemplated by this Agreement or the Earnest Money Contract, then the Buyer shall have the right to seek relief available at law, and in addition to any other remedy available at

law, to apply for and receive from a court of competent jurisdiction equitable relief by way of restraining order, injunction or otherwise, prohibitory or mandatory, to prevent a breach of the terms of this Agreement or the Earnest Money Contract, or by way of specific performance to enforce performance of the terms of this Agreement and the Earnest Money Contract, plus reimbursement for costs, including reasonable attorney's fees, incurred in the securing of such relief."

13. 9.16 is deleted in its entirety.

B. Unless amended, added, or deleted by Article I. above or under this Article II., all the remaining terms and conditions of the Asset Purchase Agreement shall remain in full force and effect according to its terms.

### **ARTICLE III. EARNEST MONEY CONTRACT**

A. As set forth in Article I. of these Amendments, the changes, additions, and deletions in the Earnest Money Contract dated December 24, 1996, are as follows:

1. RCI, the wholly owned subsidiary of Rick's Cabaret International, Inc., shall be the "Purchaser", and all the closing documents should be amended to reflect this change. Rick's Cabaret International, Inc., shall guarantee and remain liable for all the obligations of RCI.

2. Subparagraphs 2.a. through c. are deleted and replaced as follows:

a. \$50,000.00 earnest money previously paid to Seller; and

b. \$700,000.00 by Purchaser executing two (2) Promissory Notes in the form attached as Exhibit C-1 in the amount of \$200,000.00 from Rick's Cabaret International, Inc., and as Exhibit C-2 in the amount of \$500,000.00 from RCI secured by a Combination Mortgage, Security Agreement and Fixture and Financing Statement in the form attached as Exhibit D, and UCC-2 Financing Statement in the form attached as Exhibit E. The Exhibit C-2 Promissory Note and all the other obligations of RCI shall be guaranteed by Rick's Cabaret International, Inc., in the form attached hereto as Exhibit F.

3. A new Paragraph 8. shall be added and old Paragraphs 8 through 22 shall be renumbered. New Paragraph 8. shall be as follows:

"8. REMODELING. The parties hereto agree that the Purchaser may commence remodeling of the real property after the execution of

these Amendments and before the contemplated closing of October 31, 1997. The parties' agreement to allow the remodeling to commence prior to closing on this Agreement shall be subject to the following:

- a. The remodeling shall be limited to the construction or improvement to the dressing rooms in the basements, which shall be done first, and then for the construction of a kitchen on the ground floor.
- b. Purchaser shall retain a Contractor licensed to do business in the City of Minneapolis and State of Minnesota to perform the remodeling work. The Contractor shall secure any necessary permits and inspections necessary for the proper completion of the work.
- c. All plans and specifications relating to the remodeling shall be approved in writing by Seller prior to any work being commenced. Any material change or modification to those plans and specifications shall also be approved in writing by Seller. Seller's approval will not be unreasonably withheld.
- d. The Contractor shall provide a firm bid for the remodeling prior to construction and any changes to the bid shall be in writing from the Contractor, which will include a sworn construction statement listing subcontractors and materialmen.
- e. Purchaser agrees to deposit funds equal to the amount of the remodeling costs as set forth in Contractor's firm bid in an interest-bearing escrow account

requiring two signatures, one by Seller and one by Purchaser. Seller agrees to sign checks to disburse funds from that escrow account directly to Contractor and/or Subcontractors in exchange for full or partial mechanic's lien waivers from Contractor and/or Subcontractors. Purchaser shall also sign those checks. Seller agrees to cooperate with Purchaser in disbursing reasonable progress payments to Contractor based upon Contractor's completion of work.

Seller may use those funds to discharge any mechanic's liens filed against the real property relating to remodeling work done by Purchaser by paying them into Hennepin County District Court for that purpose, or if Purchaser does not dispute the mechanic's lien claim, by paying them directly

to Contractor and/or Subcontractor for a mechanic's lien waiver.

Purchaser agrees to execute the checks necessary to accomplish the above. Prior to or contemporaneously with the release of all of the escrowed funds to the Contractor, Contractor shall provide a full mechanic's lien waiver from itself and its subcontractors and materialmen to Seller and Purchaser.

f. Contractor shall carry public liability insurance covering claims for injury, wrongful death, or property damage, covering the period of construction in an amount of not less than \$1,000,000.00 per occurrence and in the amount of \$750,000.00 for property damage insurance. Contractor shall also carry, during the period of construction, builder's risk insurance on the improvements against loss or damage by vandalism, malicious mischief, fire and extended insurance coverage. Said insurance shall name Purchaser and Seller and its Mortgagees, if any, as loss payees under the policy and provide that no act or omission of Contractor shall operate to deny or limit coverage to Purchaser, Seller, and/or Seller's Mortgagee. The policy shall be in an amount not less than the full replacement value of the improvements. Prior to the commencement of the remodeling, Contractor shall deliver to Seller and Purchaser certificates of liability and builder's risk insurance required herein.

g. In the event that there is no Closing, Seller shall not be required to reimburse Purchaser for any remodeling done prior to Closing, and Purchaser shall remain liable to Seller for any unpaid remodeling costs.

4. The following sentence shall be added to Paragraph 11 (old Paragraph 10):

"Until all the obligation of Rick's Cabaret International, Inc., and RCI to Seller or Holmberg under the Asset Purchase Agreement or Earnest Money Contract are completed, Purchasers will not receive a satisfaction of the Exhibit D, Mortgage or termination of the Exhibit E., Financing Statement."

5. Paragraph 20 (old Paragraph 19) shall be deleted and replaced as follows:

"REMEDIES. If Seller defaults in the performance of this Agreement and Purchaser does not terminate this Agreement, Seller acknowledges that the Property is unique and that money damages to Purchaser in the event of default by Seller are inadequate.

Accordingly, Purchaser shall have the right to seek any other relief available at law, and in addition to any other remedy available at law, to apply for and to receive from a court of competent jurisdiction equitable relief by way of restraining order, injunction or otherwise, prohibitory or mandatory, to prevent a breach of the terms of this Agreement, or by way of specific performance to enforce performance of the terms of this Agreement, or by way or specific performance to enforce performance of the terms of this Agreement or rescission, plus reimbursement for costs, including reasonable attorneys' fees, incurred in the securing of such relief. This right to equitable relief shall not be construed to be in lieu of or to preclude Purchaser's right to seek a remedy at law. If Purchaser defaults in the performance of this Agreement, Seller's sole and exclusive remedy shall be to retain the \$50,000.00 Earnest Money released and paid to him as liquidated damages except that Seller shall not be required to reimburse Purchaser for any remodeling done prior to Closing."

B. To the extent that these Amendments to the Asset Purchase Agreement and Earnest Money Contract cause any change, addition, or deletion to any of the Exhibits herein, then the parties agree that such Exhibits shall be modified prior to Closing to conform to these Amendments.

C. Unless amended, added, or deleted by Article I. above or under this Article III., all the remaining terms and conditions of the Earnest Money Contract shall remain in full force and effect according to its terms.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and these Amendments as of date first above written.

SELLERS:

AMUSEMENT CENTER, INC.

BUYER/PURCHASER

RICK'S CABARET INTERNATIONAL, INC.

By /s/ LARRY A. HOLMBERG  
-----  
Larry A. Holmberg  
President

By /s/ ROBERT L. WATTERS  
-----  
Robert L. Watters  
President

BUNS & ROSES, INC.

RCI ENTERTAINMENT (MINNESOTA) INC.

By /s/ LARRY A. HOLMBERG  
-----  
Larry A. Holmberg  
President

By /s/ ROBERT L. WATTERS  
-----  
Robert L. Watters  
President

/s/ LARRY A. HOLMBERG  
-----  
Larry A. Holmberg  
Individually

## Exhibit 10.4

### SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT AND TO EARNEST MONEY CONTRACT

The parties to this Second Amendment to Asset Purchase Agreement and to Earnest Money Contract (the "Second Amendment") made this 31st day of October, 1997, are as follows:

LARRY A. HOLMBERG ("Holmberg" or "Seller"); AMUSEMENT CENTER, INC., a Minnesota Corporation ("Amusement Center" and collectively referred to as "Seller" with Buns & Roses II, Inc., under the Asset Purchase Agreement); BUNS & ROSES II, INC., a Minnesota Corporation ("B&RII" and collectively referred to as "Seller" with Amusement Center, Inc., in the Asset Purchase Agreement); RICK'S CABARET INTERNATIONAL, INC., a Texas Corporation ("Rick's Cabaret"); and RCI ENTERTAINMENT (MINNESOTA), INC., a Minnesota Corporation ("RCI"), a wholly owned subsidiary of Rick's Cabaret International, Inc., and its designee to acquire all of the assets under the Asset Purchase Agreement and Earnest Money Contract.

WHEREAS, the various parties have entered into a certain Asset Purchase Agreement dated the 24th day of December, 1996 ("Asset Purchase Agreement"), and a certain Earnest Money Contract dated the 24th day of December, 1996 ("Earnest Money Contract"); and

WHEREAS, the various parties entered into an Amendment to the Asset Purchase Agreement and to the Earnest Money Contract dated the 4th day of August, 1997 ("First Amendment"); and

WHEREAS, the parties contemplated a combined closing under those Agreements, as amended, on or about October 31, 1997, which combined closing did not occur; and

WHEREAS, the parties desire to further amend the Asset Purchase Agreement and the Earnest Money Contract to provide for the subsequent combined closing and for the other changes as referred to herein.

NOW, THEREFORE, in consideration of promises and mutual covenants contained herein, the parties agree as follows:

1. **SCOPE OF SECOND AMENDMENT.** All of the terms and conditions of the original Asset Purchase Agreement and Earnest Money Contract, as amended pursuant to the First Amendment, shall be in full force and effect unless amended and changed by this Second Amendment. This Second Amendment shall supersede and replace the terms of the Asset Purchase Agreement and Earnest Money Contract, as amended by the First Amendment, to the extent contemplated and so amended hereby.

2. **MODIFICATION OF PROMISSORY NOTES.** The \$500,000 Mortgage Promissory Note in the form attached to the Asset Purchase Agreement and the \$2,000,000 Promissory Note in the form attached to the Asset Purchase Agreement (collectively the "Long Term Notes"), both as



contemplated by the terms of the Asset Purchase Agreement and the Earnest Money Contract are hereby modified to provide that the first payment due under the Long Term Notes shall be due on April 1, 1998 and, thereafter, shall be due pursuant to the terms and conditions as contemplated in the Asset Purchase Agreement and Earnest Money Contract. The interest accrued on the Long Term Notes from the date of Closing (as set forth herein) until April 1, 1998, shall be added to the principal amount of the Long Term Notes and will be amortized over the term of the Long Term Notes.

3. **AMENDMENT TO GUARANTY.** The Guaranty referred to in Section 2.c. of the Earnest Money Contract, as reflected in the form attached thereto, as Exhibit F, shall be and is hereby amended to provide that in the event that the existing litigation filed by Robert W. Sabes and Classic Affairs, Inc., or if any other action is filed by Sabes or by any related party against Rick's Cabaret or any of its subsidiaries or its officers, directors or employees, including specifically, Robert L. Watters, (hereinafter collectively referred to as "Rick's") results in any injunctive relief or prohibitive relief granted to Sabes against Rick's, then the Guaranty will be terminated and of no force and effect and the obligations of Rick's Cabaret with respect to the Long Term Notes will be extinguished, provided however, that if any liens attach to the Property (as defined in the Earnest Money Contract) as a result of improvements made by Rick's Cabaret or RCI to the Property subsequent to the Closing Date that Rick's Cabaret will continue to be obligated to repay only those existing liens.

4. **ISSUANCE OF ADDITIONAL COMMON STOCK.** As consideration for entering into this Second Amendment, Rick's Cabaret hereby agrees to cause to be issued upon the execution of this Second Amendment 10,000 shares of restricted common stock of Rick's Cabaret International, Inc. ("Common Stock"), registered in the name of Holmberg. The Common Stock to be issued pursuant to this Second Amendment shall have the same registration rights as provided for the 80,000 shares of Common Stock contemplated to be issued at Closing to Holmberg pursuant to the First Amendment. Holmberg shall be entitled to retain the 10,000 shares of Common Stock regardless of whether the transactions contemplated by the Asset Purchase Agreement and Earnest Money Contract are consummated on the Closing Date, provided, however, that in the event that the Asset Purchase Agreement and Earnest Money Contract do not close and no further shares are issued to Holmberg, then the registration rights as provided by the First Amendment will terminate.

5. **CLOSING.** The Closing of the transactions provided for in the Asset Purchase Agreement and Earnest Money Contract, both as amended pursuant to the First Amendment and this Second Amendment (the "Closing") shall be held at the offices of Messerli & Kramer, P.A., 1800 Fifth Street Towers, Minneapolis, Minnesota 55402, commencing at 10:00 a.m. Central Daylight Time on January 5, 1998. The day on which the Closing occurs is referred to in the Asset Purchase Agreement and the Earnest Money Contract as the "Closing Date".

6. **EXECUTION IN COUNTERPART.** This Second Amendment may be executed in any number of counterparts, which taken together shall constitute one and the same instrument and each of which shall be considered an original for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and these Amendments as of the date first above written.

AMUSEMENT CENTER, INC.

RICK'S CABARET INTERNATIONAL, INC.

By: /s/ LARRY HOLMBERG

By: /s/ ROBERT L. WATTERS

-----  
Larry A. Holmberg, President

-----  
Robert L. Watters, President

BUNS & ROSES, INC.

RCI ENTERTAINMENT (MINNESOTA), INC.

By: /s/ LARRY HOLMBERG

By: /s/ ROBERT L. WATTERS

-----  
Larry A. Holmberg, President

-----  
Robert L. Watters, President

/s/ LARRY HOLMBERG

-----  
Larry A. Holmberg, Individually

**Exhibit 23.2**

The Board of Directors  
Rick's Cabaret International, Inc.

We consent to the use of our Report dated December 18, 1997, relating to the consolidated financial statements of Rick's Cabaret International, Inc. as of September 30, 1997 and 1996, incorporated by reference herein and to the reference to our firm under the heading "Experts" in the Registration Statement on Form S-3.

*/s/ Jackson & Rhodes P.C.*

-----  
*Jackson & Rhodes P.C.*

*March 30, 1998*

*Dallas, Texas*

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**End of Filing**

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