

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

**Amendment No. 7 to
FORM S-1
REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933**

Dave & Buster's Entertainment, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

5812
(Primary Standard Industrial
Classification Code Number)

35-2382255
(I.R.S. Employer
Identification Number)

**2481 Mañana Drive
Dallas, Texas 75220
(214) 357-9588**

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

**Stephen M. King
Chief Executive Officer
Dave & Buster's Entertainment, Inc.
2481 Mañana Drive
Dallas, Texas 75220
(214) 357-9588**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

**Corey R. Chivers, Esq.
Alexander D. Lynch, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000 (Phone)
(212) 310-8007 (Fax)**

**D. Rhett Brandon, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
(212) 455-2000 (Phone)
(212) 455-2502 (Fax)**

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

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, check the following box. ☐

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☒

Smaller reporting company ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price ⁽¹⁾⁽²⁾	Amount of Registration Fee
Common Stock, \$0.01 par value	\$150,000,000	\$17,415 ⁽³⁾

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

(2) Includes shares of common stock that may be purchased by the underwriters under their option to purchase additional shares of common stock, if any.

(3) Previously paid.

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

EXPLANATORY NOTE

The sole purpose of this amendment is to file certain exhibits to the registration statement as indicated in Item 16(a) of Part II of this amendment. No change is made to the preliminary prospectus constituting Part I of the registration statement or Items 13, 14, 15, or 17 of Part II of the registration statement. Accordingly, this amendment consists only of the facing page, this explanatory note and Item 16(a) of Part II and the signatures of the registration statement.

Item 16. Exhibits and financial statement schedules.

Exhibit Number	Description of Exhibits
1.1*	Form of Underwriting Agreement
3.1	Form of Second Amended and Restated Certificate of Incorporation of the Registrant
3.2	Form of Second Amended and Restated Bylaws of the Registrant
4.1	Form of Stock Certificate
4.2†	Indenture dated as of June 1, 2010 among Dave & Buster's, Inc., the Guarantors as defined therein and Wells Fargo National Association, as Trustee
4.3†	Form of 11% Senior Notes due 2018 (included in Exhibit 4.2)
4.4†	Indenture dated as of February 22, 2011 between Dave & Buster's Parent, Inc. and Wells Fargo National Association, as Trustee
4.5†	Form of 12.25% Senior Discount Notes due 2016 (included in Exhibit 4.4)
4.6†	Stockholder Agreement dated as of June 1, 2010, among Dave & Buster's Parent, Inc., Oak Hill Capital Partners III, L.P., Oak Hill Capital Management Partners III, L.P. and the additional stockholders named therein
4.7	Form of Stockholders' Agreement, among Dave & Buster's Entertainment, Inc., Oak Hill Capital Partners III, L.P., and Oak Hill Capital Management Partners III, L.P.
4.8*	Form of Registration Rights Agreement, among Dave & Buster's Entertainment, Inc., Oak Hill Capital Partners III, L.P., Oak Hill Capital Management Partners III, L.P. and the additional stockholders named herein.
5.1	Opinion of Weil, Gotshal & Manges LLP
10.1†	Credit Agreement dated as of June 1, 2010, among Games Intermediate Merger Corp., Games Merger Corp., 6131646 Canada, Inc. and the several banks and other financial institutions or entities from time to time parties thereto
10.2†	First Amendment, dated as of May 13, 2011, to the Credit Agreement, dated as of June 1, 2010, among Dave & Buster's Holdings, Inc., Dave & Buster's, Inc., 6131646 Canada, Inc. and the several banks and other financial institutions or entities from time to time parties thereto
10.3	Form of Amended and Restated Employment Agreement, dated as of May 2, 2010, by and among Dave & Buster's Management Corporation, Dave & Buster's, Inc., and the various executive officers of Dave & Buster's, Inc.
10.4†	Dave & Buster's Parent, Inc. 2010 Management Incentive Plan
10.5†	Amendment No. 1 to the Dave & Buster's Parent, Inc. 2010 Management Incentive Plan
10.6†	Expense Reimbursement Agreement, dated as of June 1, 2010, by and between Dave & Buster's, Inc. and Oak Hill Capital Management LLC
10.7*	Form of Dave & Buster's Entertainment, Inc. 2012 Omnibus Incentive Plan
10.8	Form of Employment Agreement, dated as of February 14, 2011, by and among Dave & Buster's Management Corporation, Dave & Buster's, Inc. and Dolf Berle
11.1†	Statement re computation of per share earnings (incorporated by reference to Notes to the Financial Statements included in Part I of this Registration Statement)
16.1†	Letter from Ernst & Young, LLP regarding statements made in the registration statement concerning its dismissal
21.1†	List of subsidiaries of the Registrant
23.1†	Consent of KPMG LLP, Independent Registered Public Accounting Firm
23.2†	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm
23.3	Consent of Weil, Gotshal & Manges LLP (included in the opinion filed as Exhibit 5.1 hereto)

<u>Exhibit Number</u>	<u>Description of Exhibits</u>
24.1†	Power of Attorney of Stephen M. King
24.2†	Power of Attorney of Brian A. Jenkins
24.3†	Power of Attorney of Michael J. Metzinger
24.4†	Power of Attorney of Tyler J. Wolfram
24.6†	Power of Attorney of Kevin M. Mailender
24.7†	Power of Attorney of Alan J. Lacy
24.8†	Power of Attorney of David A. Jones

* To be filed by amendment.

† Previously filed.

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Dallas, State of Texas, on the 27th day of August, 2012.

DAVE & BUSTER'S ENTERTAINMENT, INC.

By: /s/ Stephen M. King

Name: Stephen M. King

Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed below by the following persons in the capacities indicated on the 27th of August, 2012.

Signature

Title

/s/ Stephen M. King

Stephen M. King

Brian A. Jenkins

Michael J. Metzinger

Tyler J. Wolfram

Kevin M. Mailender

Alan J. Lacy

David A. Jones

Kevin M. Sheehan

Jonathan S. Halkyard

Michael J. Griffith

Chief Executive Officer and
Director

Senior Vice President and
Chief Financial Officer

Vice President—Accounting
and Controller

Chairman of the Board of Directors

Director

Director

Director

Director

Director

Director

*By: /s/ Stephen M. King

Attorney-in-fact

**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
DAVE & BUSTER'S ENTERTAINMENT, INC.**

Dave & Buster's Entertainment, Inc. (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware, as amended (the "DGCL"), does hereby certify as follows:

1. The name of the Corporation is Dave & Buster's Entertainment, Inc.
2. The original certificate of incorporation of the Corporation was filed with the office of the Secretary of State of the State of Delaware on April 28, 2010 (the "Original Certificate") under the name Games Acquisition Corp.
3. The Original Certificate was amended and restated pursuant to the Amended and Restated Certificate of Incorporation of the Corporation, filed with the office of the Secretary of State of the State of Delaware on June 1, 2010, providing for, among other things, a change in the name of the Corporation from Games Acquisition Corp. to Dave & Buster's Parent, Inc., as further amended by that Certificate of Amendment of the Amended and Restated Certificate of Incorporation of the Corporation, filed with the office of the Secretary of State of the State of Delaware, on July 14, 2011 (changing the name of the Corporation from Dave & Buster's Parent, Inc. to Dave & Buster's Entertainment, Inc.) (as amended, the "Amended and Restated Certificate").
4. This Second Amended and Restated Certificate of Incorporation of the Corporation (this "Second Amended and Restated Certificate") was duly adopted by the Board of Directors of the Corporation (the "Board of Directors") and by the stockholders of the Corporation in accordance with Sections 242 and 245 of the DGCL, and by the written consent of its stockholders in accordance with Section 228 of the DGCL, in order to restate and further amend the provisions of the Amended and Restated Certificate.
5. The Amended and Restated Certificate is hereby amended and restated in its entirety to read as follows:

FIRST: The name of the Corporation is Dave & Buster's Entertainment, Inc.

SECOND: The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, County of New Castle, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL, as from time to time amended.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is [] ([]) shares, consisting of (i) [] ([]) shares of common stock, having a par value of \$0.01 per share ("Common Stock") and (ii) [] ([]) shares of preferred stock, having a par value of \$0.01 per share ("Preferred Stock"). The number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote irrespective of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of Common Stock or Preferred Stock voting separately as a class shall be required therefor.

The designations and the powers, preferences, rights, qualifications, limitations, and restrictions of the Common Stock and Preferred Stock are as follows:

1. Provisions Relating to the Common Stock.

(a) Each share of Common Stock of the Corporation shall have identical rights and privileges in every respect. The holders of record (as determined pursuant to the bylaws of the Corporation (the "Bylaws")) of shares of Common Stock shall be entitled to vote upon all matters submitted to a vote of the stockholders of the Corporation and shall be entitled to one vote for each share of Common Stock held.

(b) Subject to the prior rights and preferences, if any, applicable to shares of Preferred Stock or any series thereof, the holders of shares of the Common Stock shall be entitled to receive such dividends (payable in cash, stock, or otherwise) as may be declared thereon by the Board of Directors at any time and from time to time out of any funds of the Corporation legally available therefor.

(c) In the event of any voluntary or involuntary liquidation, dissolution, or winding-up of, or upon any distribution of the assets of, the Corporation, after distribution in full of the preferential amounts, if any, to be distributed to the holders of shares of Preferred Stock or any series thereof, the holders of shares of the Common Stock shall be entitled to receive all of the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of the Common Stock held by them. A liquidation, dissolution, or winding-up of the Corporation, as such terms are used in this paragraph (c), shall not be deemed to be occasioned by or to include any consolidation or merger of the Corporation with or into any other corporation or corporations or other entity or a sale, lease, exchange, or conveyance of all or a part of the assets of the Corporation.

2. Provisions Relating to the Preferred Stock.

(a) The Preferred Stock may be issued from time to time in one or more classes or series, the shares of each class or series to have such designations and powers, preferences, and rights, and qualifications, limitations, and restrictions thereof, as are stated and expressed herein and in the resolution or resolutions providing for the issue of such class or series adopted by the Board of Directors as hereafter prescribed.

(b) Authority is hereby expressly granted to and vested in the Board of Directors to authorize the issuance of the Preferred Stock from time to time in one or more classes or series, and with respect to each class or series of the Preferred Stock, to fix and state by the resolution or resolutions from time to time adopted providing for the issuance thereof the following:

i. whether or not the class or series is to have voting rights, full, special, or limited, or is to be without voting rights, and whether or not such class or series is to be entitled to vote as a separate class either alone or together with the holders of one or more other classes or series of stock;

ii. the number of shares to constitute the class or series and the designations thereof;

iii. the relative, participating, optional, or other special rights, if any, and the qualifications, limitations, or restrictions thereof, if any, with respect to any class or series;

iv. whether or not the shares of any class or series shall be redeemable at the option of the Corporation or the holders thereof or upon the happening of any specified event, and, if redeemable, the redemption price or prices (which may be payable in the form of cash, notes, securities, or other property), and the time or times at which, and the terms and conditions upon which, such shares shall be redeemable and the manner of redemption;

v. whether or not the shares of a class or series shall be subject to retirement or sinking funds to be applied to the purchase or redemption of such shares for retirement, and, if such retirement or sinking fund or funds are to be established, the annual amount thereof, and the terms and provisions relative to the operation thereof;

vi. the dividend rate, whether dividends are payable in cash, stock of the Corporation, or other property, the conditions upon which and the times when such dividends are payable, the preference to or the relation to the payment of dividends payable on any other class or classes or series of stock, whether or not such dividends shall be cumulative or noncumulative, and if cumulative, the date or dates from which such dividends shall accumulate;

vii. the preferences, if any, and the amounts thereof which the holders of any class or series thereof shall be entitled to receive upon the voluntary or involuntary dissolution of, or upon any distribution of the assets of, the Corporation;

viii. whether or not the shares of any class or series, at the option of the Corporation or the holder thereof or upon the happening of any specified event, shall be convertible into, or exchangeable for, the shares of any other class or classes or of any other series of the same or any other class or classes of stock, securities, or other property of the Corporation and the conversion price or prices or ratio or ratios or the rate or rates at which such exchange may be made, with such adjustments, if any, as shall be stated and expressed or provided for in such resolution or resolutions; and

ix. such other special rights and protective provisions with respect to any class or series as the Board of Directors deems advisable.

(c) The shares of each class or series of the Preferred Stock may vary from the shares of any other class or series thereof in any or all of the foregoing respects. The Board of Directors may increase the number of shares of the Preferred Stock designated for any existing class or series by a resolution adding to such class or series authorized and unissued shares of the Preferred Stock not designated for any other class or series. The Board of Directors may decrease the number of shares of the Preferred Stock designated for any existing class or series by a resolution subtracting from such class or series authorized and unissued shares of the Preferred Stock designated for such existing class or series, and the shares so subtracted shall become authorized, unissued, and undesignated shares of the Preferred Stock.

3. General.

(a) Subject to the foregoing provisions of this Second Amended and Restated Certificate, the Corporation may issue shares of its Preferred Stock and Common Stock from time to time for such consideration (not less than the par value thereof) as may be fixed by the Board of Directors, which is expressly authorized to do so in its absolute and uncontrolled discretion subject to the terms of this Second and Amended Certificate. Shares so issued for which the consideration shall have been paid or delivered to the Corporation shall be deemed fully paid stock and shall not be liable to any further call or assessment thereon, and the holders of such shares shall not be liable for any further payments in respect of such shares.

(b) The Corporation shall have authority to create and issue rights and options entitling their holders to purchase shares of the Corporation's capital stock of any class or series or other securities of the Corporation, and such rights and options shall be evidenced by instrument(s) approved by the Board of Directors. The Board of Directors shall be empowered to set the exercise price, duration, times for exercise, and other terms of such options or rights; provided, however, that the consideration to be received for any shares of capital stock subject thereto shall not be less than the par value thereof.

FIFTH: The number of directors constituting the entire Board of Directors shall be fixed by, or in the manner provided in, the Bylaws. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director. At all elections of directors, stockholder voting may but need not be by ballot. Each director

shall hold office until such director's successor is duly elected and qualified, or until the earlier of such director's death, resignation or removal in accordance with this Second Amended and Restated Certificate. The Board of Directors, acting by a majority vote of the directors then in office, shall fill any newly created directorships or vacancies on the Board of Directors.

A plurality of the votes cast by stockholders in person or by proxy shall elect such directors to the Board of Directors.

At any meeting called expressly for that purpose, any director may be removed but only with Cause (defined below) by the affirmative vote of a majority of the remaining members of the Board of Directors or the holders of at least sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the voting power of all shares of capital stock of the Corporation then entitled to vote on the election of directors, voting together as a single class.

"Cause" shall be deemed to exist only if: (i) such director has been indicted for or convicted of, has pleaded guilty or *nolo contendere* to, or such director is granted immunity to testify where another has been convicted of, a felony, (ii) such director has willfully failed to perform his duties, has been grossly negligent in the performance of his duties or has engaged in willful or serious misconduct in a matter that is injurious to the Corporation, in each case as determined by a court of competent jurisdiction or by the affirmative vote of at least a majority of the other members of the Board of Directors at any regular or special meeting of the Board of Directors called for such purpose, (iii) such director has been adjudicated by a court of competent jurisdiction to be mentally incompetent, which mental incompetency directly affects his ability to perform as a director of the Corporation, (iv) such director has been found by a court of competent jurisdiction or by the affirmative vote of at least a majority of the other members of the Board of Directors at any regular or special meeting of the Board of Directors called for such purpose to have breached such director's duty of loyalty to the Corporation or its stockholders or to have engaged in any transaction with the Corporation from which such director derived an improper personal benefit or (v) cause for removal otherwise exists under Section 141(k)(1) of the DGCL. No director of the Corporation so removed may be nominated, re-elected or reinstated as a director of the Corporation so long as the cause for removal continues to exist.

For so long as Oak Hill Capital Partners III, L.P., Oak Hill Capital Management III, L.P. or one of their affiliates (collectively, "Oak Hill Capital"), individually or in the aggregate, own, beneficially or of record, 40% or more of the voting power of the outstanding shares of capital stock of the Corporation entitled to vote at a meeting of stockholders (as determined based on the books and records of the Corporation maintained by the Secretary), any action required or permitted to be taken at any meeting of stockholders may, except as otherwise required by law or this Second Amended and Restated Certificate, be taken without a meeting, without prior notice and without a vote, if the taking of such action by written consent has been expressly approved in advance by the Board of Directors and a consent in writing, setting forth the action so taken, shall be signed by the holders of record of the issued and outstanding capital stock of the

Corporation having not less than a minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and the writing or writings are filed with the permanent records of the Corporation.

SIXTH: In addition to the powers and authority herein before or by statute expressly conferred upon them, the Board of Directors is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject to the provisions of the DGCL, this Second Amended and Restated Certificate and the Bylaws.

SEVENTH: To the fullest extent permitted by law (including, without limitation, Section 122(17) of the DGCL), the doctrine of corporate opportunity, or any analogous doctrine, shall not apply to any stockholder or director of the Corporation, except those stockholders or directors who are employees of the Corporation or its subsidiaries (collectively, the "Business Opportunities Exempt Parties"). The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to any Business Opportunities Exempt Party. No Business Opportunities Exempt Party who acquires knowledge of a potential transaction, agreement, arrangement or other matter that may be an opportunity for the Corporation shall have any duty to communicate or offer such opportunity to the Corporation, and such Business Opportunities Exempt Party shall not be liable to the Corporation or to its stockholders for breach of any fiduciary or other duty by reason of the fact that such Business Opportunities Exempt Party pursues or acquires, or directs such opportunity to another person or does not communicate such opportunity or information to the Corporation; provided, however, that the foregoing in this ARTICLE SEVENTH shall not apply to any person who is a director or officer of the Corporation if such business opportunity is expressly offered to such director or officer in writing solely in his or her capacity as a director or officer of the Corporation. Any person purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and consent to the provisions of this ARTICLE SEVENTH. No amendment or repeal of this ARTICLE SEVENTH shall apply to or have any effect on the liability or alleged liability of any Business Opportunities Exempt Party for or with respect to any opportunities of which any such Business Opportunities Exempt Party becomes aware prior to such amendment or repeal.

EIGHTH: A director of the Corporation shall not be personally liable either to the Corporation or to any stockholder for monetary damages for breach of fiduciary duty as a director, except (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions which are not in good faith or which involve intentional misconduct or knowing violation of the law, (iii) for any matter in respect of which such director shall be liable under Section 174 of Title 8 of the DGCL or any amendment thereto or successor provision thereto, or (iv) for any transaction from which the director shall have derived an improper personal benefit. Neither amendment nor repeal of this ARTICLE EIGHTH nor the adoption of any provision or amendment of this

Second Amended and Restated Certificate inconsistent with this ARTICLE EIGHTH shall eliminate or reduce the effect of this ARTICLE EIGHTH in respect of any matter occurring, or any cause of action, suit or claim that, but for this ARTICLE EIGHTH, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

NINTH: The Corporation shall indemnify any person who was, is, or is threatened to be made a party to a proceeding (as hereinafter defined) by reason of the fact that he or she (a) is or was a director or officer of the Corporation or (b) while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, manager, venturer, proprietor, trustee, employee, agent, or similar function of another foreign or domestic corporation, partnership, joint venture, limited liability company, sole proprietorship, trust, employee benefit plan, or other enterprise, at any time during which this ARTICLE NINTH is in effect (whether or not such person continues to serve in such capacity at the time any indemnification or advancement of expenses pursuant hereto is sought or at the time any proceeding relating thereto exists or is brought), and whether the basis of such proceeding is alleged action in an official capacity as a director or officer, or in such other capacity while serving as an a director or officer, to the fullest extent permitted under the DGCL, as the same exists or may hereafter be amended or modified from time to time (but, in the case of any such amendment or modification, only to the extent that such amendment or modification permits the Corporation to provide greater indemnification rights than said law permitted the Corporation to provide prior to such amendment or modification) against all expenses, liabilities and losses (including attorney's fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) incurred or suffered by such person in connection therewith. Such indemnification shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her heirs, executors and administrators.

The indemnification permitted by this ARTICLE NINTH shall be a contract right and as such shall run from the Corporation (and any successor of the Corporation by operation of law or otherwise) to the benefit of any director or officer who is elected and accepts the position of director or officer of the Corporation or elects to continue to serve as a director or officer of the Corporation while this ARTICLE NINTH is in effect. Any repeal or amendment of this ARTICLE NINTH shall be prospective only and shall not limit the rights of any such director or officer or the obligations of the Corporation with respect to any claim arising from or related to the services of such director or officer in any of the foregoing capacities prior to any such repeal or amendment to this ARTICLE NINTH.

A claimant shall have the right to be paid by the Corporation expenses (including attorney's fees) incurred in defending any such proceeding in advance of its final disposition to the maximum extent permitted under the DGCL, as the same exists or may hereafter be amended or modified, only to the extent that such amendment or modification permits the Corporation to provide greater rights to advancement of expenses than said law

permitted the Corporation to provide prior to such amendment or modification, upon receipt of any undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such director or officer is not entitled to be indemnified by the Corporation against such expenses as authorized by this ARTICLE NINTH, if such undertaking is required by the DGCL. Such advances shall be paid by the Corporation within 20 calendar days after the receipt by the Corporation of a statement or statements from the claimant requesting such advance or advances from time to time (including such undertaking if required by the DGCL), and shall not require any action by the Board of Directors. The Board of Directors may authorize the Corporation's counsel to represent such director or officer in any such proceeding, whether or not the Corporation is a party to such proceeding.

If a claim for indemnification or advancement of expenses hereunder is not paid in full by the Corporation within 60 days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, the claimant shall also be entitled to be paid the expenses of prosecuting such claim. It shall be a defense to any such action that such indemnification or advancement of costs of defense are not permitted under the DGCL or other applicable law, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including the Board of Directors or any committee thereof, independent legal counsel, or stockholders) to have made its determination prior to the commencement of such action that indemnification of, or advancement of costs of defense to, the claimant is permissible in the circumstances nor an actual determination by the Corporation (including its Board of Directors or any committee thereof, independent legal counsel, or stockholders) that such indemnification or advancement is not permissible shall be a defense to the action or create a presumption that such indemnification or advancement is not permissible.

In the event of the death of any person having a right of indemnification under the foregoing provisions, such right shall inure to the benefit of his or her heirs, executors, administrators, and personal representatives. The rights conferred above shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, bylaw, resolution of stockholders or directors, agreement, or otherwise.

The Corporation may additionally indemnify any employee or agent of the Corporation and such other persons as may be permitted under the DGCL to the fullest extent permitted by law.

As used herein, the term "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitative, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

TENTH: The Corporation shall not be governed by Section 203 of the DGCL. Notwithstanding the foregoing, the Corporation shall not engage in any business combination (as defined below), at any point in time at which the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended, with any interested stockholder (as defined below) for a period of three (3) years following the time that such stockholder became an interested stockholder, unless:

- (a) prior to such time, the Board of Directors approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder; or
- (b) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least eighty-five percent (85%) of the voting stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (1) persons who are directors and also officers and (2) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- (c) at or subsequent to such time, the business combination is approved by the Board of Directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the outstanding voting stock of the Corporation which is not owned by the interested stockholder.

1. As used in this ARTICLE TENTH, references to:

- (a) "affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.
- (b) "associate" when used to indicate a relationship with any person, means: (1) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of twenty percent (20%) or more of any class of voting stock; (2) any trust or other estate in which such person has at least a twenty percent (20%) beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (3) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.
- (c) "business combination" when used in reference to the Corporation and any interested stockholder of the Corporation, means:

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- (1) any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation (i) with the interested stockholder, or (ii) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation the first paragraph of this ARTICLE TENTH is not applicable to the surviving entity;
- (2) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to ten percent (10%) or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation;
- (3) any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the interested stockholder, except:
- (i) pursuant to the exercise, exchange or conversion of the securities exercisable for, exchangeable for or convertible into stock of the Corporation or any subsidiary which securities were outstanding prior to the time that the interested stockholder became such;
 - (ii) pursuant to a merger under Section 251(g) of the DGCL; (iii) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the interested stockholder became such; (iv) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock; or (v) any issuance or transfer of stock by the Corporation; provided, however, that in no case under items (iii)-(v) of this subsection (3) shall there be an increase in the interested stockholder's proportionate share of the stock of any class or series of the Corporation or the voting stock of the Corporation (except as a result of immaterial changes due to fractional share adjustments);

(4) any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such subsidiary which is owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or

(5) any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in subsection (1)-(4) above) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

- (d) “control,” including the terms “controlling,” “controlled by” and “under common control with” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of twenty percent (20%) or more of the outstanding voting stock of any corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith and not for the purpose of circumventing this ARTICLE TENTH, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.
- (e) “interested stockholder” means any person (other than the Corporation or any direct or indirect majority-owned subsidiary of the Corporation) that (1) is the owner of fifteen percent (15%) or more of the outstanding voting stock of the Corporation, or (2) is an affiliate or associate of the Corporation and was the owner of fifteen percent (15%) or more of the outstanding voting stock of the Corporation at any time within the three (3) year period immediately prior to the date on which it is sought to be determined whether such person is an interested stockholder, and the affiliates and associates of such person; provided, however, that the term “interested stockholder” shall in no case include, or be deemed to include, (1) Oak Hill Capital Partners III, L.P. or Oak Hill Capital Management Partners III, L.P., or any successor to all or substantially all of their assets, or any affiliate thereof (collectively, the “Investors”), or any person to which any Investor sells, distributes or otherwise transfers voting stock of the Corporation, in each case regardless of the total percentage of voting stock of the Corporation owned by the Investors or such person (other than any person to which any Investor sells, distributes or otherwise transfers voting stock of the Corporation (i) pursuant to an underwritten, broadly distributed public

offering or (ii) in a transaction effected through a broker pursuant to Rule 144 promulgated under Section 4(1) of the Securities Act of 1933, as amended), or (2) any person whose ownership of share in excess of the fifteen percent (15%) limitation set forth herein is the result of any action taken solely by the Corporation; provided that such person specified in this clause (2) shall be an interested stockholder if thereafter such person acquires additional shares of voting stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by such person. For the purpose of determining whether a person is an interested stockholder, the voting stock of the Corporation deemed to be outstanding shall include voting stock deemed to be owned by the person through application of the definition of "owner" below but shall not include any other unissued stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

- (f) "owner," including the terms "own" and "owned," when used with respect to any stock, means a person that individually or with or through any of its affiliates or associates:

(1) beneficially owns such stock, directly or indirectly; or

(2) has (i) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants, options, or otherwise; provided, however, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange; or (ii) the right to vote such stock pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the owner of any stock because of such person's right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten (10) or more persons; or

(3) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (ii) of subsection (2) above), or disposing of such stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.

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- (g) “person” means any individual, corporation, partnership, or unincorporated association or other entity.
 - (h) “stock” means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.
 - (i) “voting stock” means stock of any class or series entitled to vote generally in the election of directors.

ELEVENTH: Provisions of this Second Amended and Restated Certificate may be amended, modified or repealed by the affirmative vote of the requisite number of holders of the voting power of shares of capital stock of the Corporation or directors on the Board of Directors as provided by the DGCL; provided, however, notwithstanding anything to the contrary contained herein, (i) ARTICLES FIFTH, SEVENTH, EIGHTH, and NINTH may not be amended, modified or repealed (or any provision adopted inconsistent with such provisions) by the stockholders without the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 ²/₃%) of the voting power of all shares of capital stock of the Corporation entitled to vote generally, then outstanding, voting together as a single class at any annual or special meeting of the stockholders in which notice of such amendment, modification, repeal or adoption is contained and (ii) this ARTICLE ELEVENTH and ARTICLES TENTH, TWELFTH AND THIRTEENTH may not be amended, modified or repealed (or any provision adopted inconsistent with such provisions) by the stockholders without the affirmative vote of the holders of at least seventy-five percent (75%) of the voting power of all shares of capital stock of the Corporation entitled to vote generally, then outstanding, voting together as a single class at any annual or special meeting of the stockholders in which notice of such amendment, modification, repeal or adoption is contained.

TWELFTH: The Court of Chancery of the State of Delaware shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim against the Corporation arising pursuant to any provision of the DGCL or the Corporation’s certificate of incorporation or bylaws or (iv) any action asserting a claim against the Corporation governed by the internal affairs doctrine, in each such case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Any person or entity purchasing or otherwise acquiring any interest in the shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this ARTICLE TWELFTH.

THIRTEENTH: If any provision or provisions of this Second Amended and Restated Certificate shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Second Amended and Restated Certificate (including,

without limitation, each portion of any paragraph of this Second Amended and Restated Certificate containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of this Second Amended and Restated Certificate (including, without limitation, each such portion of any paragraph of this Second Amended and Restated Certificate containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law.

[Remainder of page intentionally left blank.]

its behalf on this IN WITNESS WHEREOF, the Corporation has caused this Second Amended and Restated Certificate of Incorporation to be executed on
day of , 2012.

DAVE & BUSTER'S ENTERTAINMENT, INC.

By: _____
Name: Jay L. Tobin
Title: Secretary

**SECOND AMENDED AND RESTATED
BYLAWS
OF
DAVE & BUSTER'S ENTERTAINMENT, INC.
(a Delaware corporation)**

PREAMBLE

These Bylaws ("Bylaws") are subject to, and governed by, the General Corporation Law of the State of Delaware (the "DGCL") and the certificate of incorporation (as amended and restated from time to time, the "Charter") of Dave & Buster's Entertainment, Inc., a Delaware corporation (the "Corporation"). In the event of a direct conflict between the provisions of these Bylaws and the mandatory provisions of the DGCL or the provisions of the Charter, such provisions of the DGCL or the Charter, as the case may be, shall control.

ARTICLE I

Offices

SECTION 1. Registered Office and Agent. The registered office and registered agent of the Corporation shall be as designated from time to time by the appropriate filing by the Corporation in the office of the Secretary of State of the State of Delaware.

SECTION 2. Other Offices. The Corporation may also have offices at such other places, both within and without the State of Delaware, as the board of directors of the Corporation (the "Board of Directors") may from time to time determine or as the business of the Corporation may require.

ARTICLE II

Stockholders

SECTION 1. Annual Meetings. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held each year at such date and time, within or without the State of Delaware, as the Board of Directors shall determine and set forth in the notice of such meeting. At the annual meeting, any business may be transacted and any corporate action may be taken, whether stated in the notice of meeting or not, except as otherwise expressly provided by the DGCL, any other applicable law, rule or regulation, the Charter or these Bylaws. The annual meetings of stockholders shall be held at the principal executive office of the Corporation unless another place is designated for such meetings in the applicable notice of the meeting or in the manner provided herein.

SECTION 2. Special Meetings. Special meetings of stockholders for the transaction of such business as may properly come before the meeting may be called by the Chief Executive Officer or by order of the Board of Directors, and shall be held at such date and time, within or without the State of Delaware, as may be designated by the person(s) calling the meeting and stated in the notice of the meeting. Only such business shall be transacted at a special meeting as may be stated or indicated in the notice of such meeting. Each special meeting of stockholders shall be held at the principal executive office of the Corporation unless another place is designated for such meeting in the notice of the meeting or in the manner provided herein. The ability of stockholders to call a special meeting of stockholders is specifically denied.

SECTION 3. Notice of Meetings. Written notice of all meetings of the stockholders, stating the place, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and the place within the city or other municipality or community at which the list of stockholders may be examined, shall be mailed or delivered to each stockholder of record entitled to vote at such meeting not less than 10 nor more than 60 days prior to the meeting. Notice of any special meeting shall state in general terms the purpose or purposes for which the meeting is to be held. Notice of meetings shall be given to stockholders in accordance with Article IX.

SECTION 4. Stockholder Lists. The Secretary or other officer who has charge of the stock ledger of the Corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, at the principal executive office of the Corporation. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this section or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

SECTION 5. Quorum. Except as otherwise provided by applicable law, the Charter or these Bylaws, a quorum for the transaction of business at any meeting of stockholders shall consist of the holders of record of a majority of the voting power of the issued and outstanding shares of the capital stock of the Corporation entitled to vote at the meeting, present in person or by proxy. At all meetings of the stockholders at which a quorum is present, all matters, except as otherwise provided by law, the Charter or these Bylaws, shall be decided by the vote of the holders of a majority of the shares entitled to

vote thereat present in person or by proxy. If there be no such quorum, the holders of a majority of such shares so present or represented or, if no stockholder entitled to vote is present, any officer of the Corporation present at such meeting, may adjourn the meeting from time to time, without further notice (unless the Board of Directors after such adjournment, fixes a new record date for the adjourned meeting), until a quorum shall have been obtained. At any adjourned meeting at which a quorum shall be present, in person or by proxy, any business may be transacted that may have been transacted at the original meeting had a quorum been present; provided, however, that if the adjournment is for more than 30 days or if after the adjournment a new record date is fixed for the adjourned meeting, a new notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the adjourned meeting. When a quorum is once present, the stockholders present at a duly constituted meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

SECTION 6. Organization. Meetings of stockholders shall be presided over by the Chairman of the Board of Directors (the “Chairman”), or in the Chairman’s absence, the Lead Independent Director, or in the Lead Independent Director’s absence, the Chief Executive Officer, or in the Chief Executive Officer’s absence, the President, or, if none of the foregoing is present, by a chairman to be chosen by a majority of the stockholders entitled to vote who are present in person or by proxy at the meeting. The Secretary of the Corporation, or in the Secretary’s absence, an Assistant Secretary (but if neither the Secretary nor an Assistant Secretary is present, any person appointed by the presiding officer of the meeting) shall act as secretary and keep the records of such meeting of stockholders.

SECTION 7. Voting; Proxies; Required Vote.

(a) At each meeting of stockholders, every stockholder shall be entitled to vote in person or by proxy appointed by instrument in writing, subscribed by such stockholder or by such stockholder’s duly authorized attorney-in-fact (but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period), and, unless the Charter provides otherwise, shall have one vote for each share of stock entitled to vote registered in the name of such stockholder on the books of the Corporation on the applicable record date fixed pursuant to these Bylaws.

(b) At all elections of directors, stockholder voting may but need not be by ballot and a plurality of the votes cast by stockholders in person or by proxy shall elect such directors to the Board of Directors. Except as otherwise provided by applicable law, the Charter or these Bylaws (in which case such provision shall govern and control the decision of such question), any other matter or action shall be authorized by the vote of the majority of voting power of the outstanding shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter.

(c) Any action required or permitted to be taken at any meeting of stockholders may only be taken without a meeting, without prior notice and without a vote as, and to the extent, provided in the Charter.

SECTION 8. Inspectors. The Board of Directors, in advance of any meeting, shall appoint one or more inspectors of election to act at the meeting or any adjournment thereof. If an inspector or inspectors are not so appointed, the person presiding at the meeting shall appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy shall be filled by appointment made by the directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. The inspector or inspectors shall make a report in writing of any challenge, question or matter determined by such inspector or inspectors and execute a certificate of any fact found by such inspector or inspectors. No director or candidate for the office of director shall act as an inspector of an election of directors. Inspectors need not be stockholders.

SECTION 9. Advance Notice of Stockholder Nominations and Proposals.

(a) Timely Notice. At a meeting of the stockholders, only such nominations of persons for the election of directors and such other business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, nominations or such other business must be: (i) specified in the Corporation's notice of meeting, (ii) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or any committee thereof, or (iii) otherwise properly brought before an annual meeting by a stockholder who is a stockholder of record of the Corporation at the time such notice of meeting is given, who is entitled to vote at the meeting and who complies with the procedures set forth in this Article II, Section 9. To be properly brought before a special meeting, nominations or such other business must be specified in the Corporation's notice of meeting. In addition, any proposal of business (other than the nomination of persons for election to the Board of Directors) must be a proper matter for stockholder action. For business (including, but not limited to, director nominations) to be properly brought before an annual meeting by a stockholder, the stockholder or stockholders of record intending to propose the business (the "Proposing Stockholder") must have given timely notice thereof pursuant to this Article II, Section 9, in writing to the Secretary of the Corporation even if such matter is already the subject of (1) any notice to the stockholders from the Board of Directors, (2)

any press release of the Corporation or (3) a filing by the Corporation with the Securities and Exchange Commission (the “SEC”) (a “Public Disclosure”). To be timely, a Proposing Stockholder’s notice must be addressed to the Secretary of the Corporation and delivered to or mailed and received at the principal executive office of the Corporation not later than the close of business on the 90th day, nor earlier than the close of business on the 120th day in advance of the anniversary of the previous year’s annual meeting; provided, however, that with respect to the Corporation’s first annual meeting or in the event that the date of the annual meeting is advanced by more than 30 days or delayed by more than 90 days from such anniversary date, notice by the Proposing Stockholder to be timely must be so delivered not later than the close of business on the later of the 90th day prior to such annual meeting or, if a public announcement of the date of annual meeting is made fewer than 100 days prior to the date of such meeting, the 10th day following the day on which public announcement of the date of such meeting is first made. In no event shall the Public Disclosure of an adjournment or postponement of an annual meeting commence a new notice time period (or extend any notice time period).

(b) Stockholder Nominations. For the nomination of any person or persons for election to the Board of Directors, a Proposing Stockholder’s notice to the Secretary of the Corporation shall set forth (i) the name, age, business address and residence address of each nominee proposed in such notice, (ii) the principal occupation or employment of each such nominee, (iii) the number, class and series of shares of capital stock of the Corporation which are owned of record and beneficially by each such nominee (if any), (iv) such other information concerning each such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved), or that is otherwise required to be disclosed, under the rules of the SEC, (v) the consent of the nominee to being named in the proxy statement as a nominee and to serving as a director if elected, and (vi) as to the Proposing Stockholder: (A) the name and address of the Proposing Stockholder as they appear on the Corporation’s books and of the beneficial owner, if any, on whose behalf the nomination is being made, (B) the number, class and series of shares of the Corporation which are owned by the Proposing Stockholder (beneficially and of record) and owned by the beneficial owner, if any, on whose behalf the nomination is being made, as of the date of the Proposing Stockholder’s notice, and a representation that the Proposing Stockholder will notify the Corporation in writing of the number, class and series of such shares owned of record and beneficially as of the record date for the meeting promptly following the later of the record date or the date notice of the record date is first publicly disclosed, (C) a description of any agreement, arrangement or understanding with respect to such nomination between or among the Proposing Stockholder and any of its affiliates or associates, and any others (including their names) acting in concert with any of the foregoing, and a representation that the Proposing Stockholder will notify the Corporation in writing of any such agreement, arrangement or understanding in effect as of the record date for the meeting promptly following the later of the record date or the date notice of the record date is first publicly disclosed, (D) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, hedging transactions,

and borrowed or loaned shares) that has been entered into as of the date of the Proposing Stockholder's notice by, or on behalf of, the Proposing Stockholder or any of its affiliates or associates, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of the Proposing Stockholder or any of its affiliates or associates with respect to shares of stock of the Corporation, and a representation that the Proposing Stockholder will notify the Corporation in writing of any such agreement, arrangement or understanding in effect as of the record date for the meeting promptly following the later of the record date or the date notice of the record date is first publicly disclosed, (E) a representation that the Proposing Stockholder is a holder of record of shares of the Corporation entitled to vote at the meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice, and (F) a representation whether the Proposing Stockholder intends to deliver a proxy statement and/or form of proxy to holders of a majority of the total voting power and/or otherwise to solicit proxies from stockholders in support of the nomination. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee. No nominee of a stockholder (or stockholders) who has (or have) failed to comply with the requirements of this Article II, Section 9(b) shall be eligible to serve as a director of the Corporation.

(c) Other Stockholder Proposals. For all business other than director nominations, a Proposing Stockholder's notice to the Secretary of the Corporation shall set forth as to each matter the Proposing Stockholder proposes to bring before the annual meeting: (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) any other information relating to such stockholder and beneficial owner, if any, on whose behalf the proposal is being made, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the proposal and pursuant to and in accordance with Section 14(a) of the Securities Exchange Act of 1934, as amended, and (iii) the information required by Article II, Section 9(b)(vi) above.

ARTICLE III

Board of Directors

SECTION 1. General Powers. The business, property and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors. Subject to the restrictions imposed by law, the Charter, or these Bylaws, the Board of Directors may exercise all the powers of the Corporation.

SECTION 2. Qualification; Number; Election; Term; Remuneration.

(a) Each director shall be at least 18 years of age. A director need not be a stockholder, a citizen of the United States, or a resident of the State of Delaware. Subject to the provisions of the Charter, the number of directors constituting the entire Board of Directors shall be at least six (6) and no more than twelve (12) members (as fixed by resolution of the Board of Directors), one of whom shall be selected by the Board of Directors to be its Chairman. The use of the phrase "entire Board of Directors" herein refers to the total number of directors which the Corporation would have if there were no vacancies.

(b) The Board of Directors shall be elected by the vote of the stockholders, and classified with respect to the duration of the directors terms as, and to the extent, provided in the Charter. Directors who are elected at an annual meeting of stockholders, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until their successors are elected and qualified or until the earlier resignation or removal. No decrease in the number of directors constituting the entire Board of Directors shall have the effect of shortening the term of any incumbent director.

(c) The Board of Directors (or a committee thereof) shall have the authority to fix the compensation, including fees and reimbursement of expenses, paid to directors for attendance at regular or special meetings of the Board of Directors. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

SECTION 3. Quorum and Manner of Voting. Except as otherwise provided by law, a majority of the entire Board of Directors shall constitute a quorum. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting from time to time to another time and place without notice. Unless the act of a greater number is required by law, the Charter, or these Bylaws, the vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

SECTION 4. Places of Meetings. Meetings of the Board of Directors may be held at any place within or without the State of Delaware, as may from time to time be fixed by resolution of the Board of Directors, or as may be specified in the notice of meeting.

SECTION 5. Annual Meeting. Following each annual meeting of stockholders, the newly elected Board of Directors shall meet for the purpose of the election of officers and the transaction of such other business as may properly come before the meeting; provided, that new officers may be elected and any vacancies filled at any meeting of the Board of Directors. Such meeting may be held without notice immediately after the annual meeting of stockholders at the same place at which such stockholders' meeting is held.

SECTION 6. Regular Meetings. Regular meetings of the Board of Directors shall be held at such times and places as the Board of Directors shall from time to time by resolution determine. Notice need not be given of regular meetings of the Board of Directors held at times and places fixed by resolution of the Board of Directors.

SECTION 7. Special Meetings. Special meetings of the Board of Directors shall be held whenever called by the Chairman, the Chief Executive Officer or at least two (2) directors (acting jointly).

SECTION 8. Notice of Meetings. A notice of the place, date and time and the purpose or purposes of each meeting of the Board of Directors shall be given to each director in accordance with Article IX by mailing the same at least two days before the meeting, or by telephoning or emailing the same or by delivering the same personally not later than the day before the day of the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

SECTION 9. Organization. At all meetings of the Board of Directors, the Chairman, if any, or if none or in the Chairman's absence or inability to act, the Lead Independent Director, or in the Lead Independent Director's absence or inability to act, the Chief Executive Officer (if then serving as a director on the Board of Directors), or in the Chief Executive Officer's absence or inability to act, any chairman chosen by the directors present at such meeting, shall preside. The Secretary of the Corporation shall act as secretary at all meetings of the Board of Directors when present, and, in the Secretary's absence, the presiding officer may appoint any person to act as secretary.

SECTION 10. Resignation; Removal.

(a) Any director may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the Chief Executive Officer, President or Secretary, unless otherwise specified in the resignation.

(b) At any meeting called expressly for that purpose, any director may be removed from the Board of Directors only, and to the extent, provided in the Charter.

SECTION 11. Vacancies. Unless otherwise provided in these Bylaws, vacancies on the Board of Directors, whether caused by resignation, death, disqualification, removal, an increase in the authorized number of directors or otherwise, may be filled by the affirmative vote of a majority of the remaining directors, although less than a quorum, or by a sole remaining director, or at a special meeting of the stockholders, by the holders of shares entitled to vote for the election of directors.

SECTION 12. Presumption of Assent. A director of the Corporation who is present at the meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such

action with the person acting as secretary of the meeting before the adjournment thereof or shall forward any dissent by certified or registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

SECTION 13. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all the directors consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors.

SECTION 14. Lead Independent Director.

(a) The Board of Directors shall elect one of its independent directors to serve as the lead independent director (the "Lead Independent Director") having the duties and responsibilities set forth in this Article III, Section 14 and as otherwise determined by the Board of Directors from time to time. The Lead Independent Director shall be elected to a term commencing upon his or her election by the Board of Directors and ending on the date that is one year after such election, or upon his or her earlier death, resignation, removal or disqualification as an independent director.

(b) In addition to his or her responsibilities as a director, the Lead Independent Director shall be responsible for: (i) chairing executive sessions where non-management directors meet either before or after regularly scheduled meetings of the Board of Directors and, as appropriate, providing prompt feedback to the Chairman of the Board and the Chief Executive Officer, (ii) calling, setting the agenda for and chairing periodic executive sessions and meetings of the independent directors of the Board of Directors and reporting accordingly to the full Board of Directors and the Chief Executive Officer, (iii) chairing Board of Director meetings in the absence of the Chairman or when it is deemed appropriate, (iv) providing feedback to the Chairman and the Chief Executive Officer on corporate and Board of Director policies and strategies and, when requested by the Board of Directors, acting as a liaison between the Board of Directors and the Chief Executive Officer, (v) in concert with the Chairman, advising on the agenda and schedule for Board of Director meetings and strategic planning sessions based on input from directors and (vi) carrying out such other duties as are requested by the Board of Directors or any of its committees from time to time.

ARTICLE IV
Committees

SECTION 1. Appointment. From time to time the Board of Directors by a resolution adopted by the Board of Directors may designate and appoint any committee or committees for any purpose or purposes, to the extent lawful, which shall have powers as shall be determined and specified by the Board of Directors in the resolution of appointment. In furtherance of the foregoing, at a minimum, the Board of Directors shall, by resolution, designate and appoint an audit committee, a compensation committee and a corporate governance and nominating committee.

SECTION 2. Number. Each committee shall consist of one (1) or more directors appointed by resolution adopted by the Board of Directors. The number of committee members may be increased or decreased from time to time by resolution adopted by the Board of Directors.

SECTION 3. Procedures, Quorum and Manner of Acting. Subject to any overriding resolution of the Board of Directors, each committee shall fix its own rules of procedure, and shall meet where and as provided by such rules or by resolution of the Board of Directors. Except as otherwise provided by law, the presence of a majority of the then appointed members of a committee shall constitute a quorum for the transaction of business by that committee. To the fullest extent permitted by law, if a quorum is not present at a meeting of any committee, a majority of the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Except as otherwise provided by the Charter, these Bylaws or the rules adopted by such committee, in every case where a quorum is present the affirmative vote of a majority of the members of the committee present shall be the act of the committee. Each committee shall keep minutes of its proceedings, and actions taken by a committee shall be reported to the Board of Directors.

SECTION 4. Authority. Each committee, to the extent expressly provided in the Board of Directors resolution establishing such committee, shall have and may exercise all of the authority of the Board of Directors in the management of the business and property of the Corporation, except to the extent expressly restricted by law, the Charter, or these Bylaws.

SECTION 5. Committee Changes. Except as provided by applicable laws, rules or regulations, the Board of Directors shall have the power at any time to fill vacancies in, to change the membership of, and to discharge any committee.

SECTION 6. Action by Written Consent. Any action required or permitted to be taken at any meeting of any committee of the Board of Directors may be taken without a meeting if all the members of the committee consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the committee.

SECTION 7. Term; Termination. In the event any person shall cease to be a director of the Corporation, such person shall simultaneously therewith cease to be a member of any committee appointed by the Board of Directors.

SECTION 8. Compensation. The Board of Directors (or a committee thereof) shall have the authority to fix the compensation, including fees and reimbursement of expenses, paid to committee members for attendance at committee meetings. No such payment shall preclude any committee members from serving the Corporation in any other capacity and receiving compensation therefor.

SECTION 9. Responsibility. The designation of any committee and the delegation of authority to it shall not operate to relieve the Board of Directors or any director of any responsibility imposed upon it or such director by law.

ARTICLE V

Officers

SECTION 1. Election and Qualifications. The Board of Directors shall elect the officers of the Corporation, which shall include a Chairman, Chief Executive Officer, President, Chief Financial Officer and a Secretary, and may include, by election or appointment, one or more Vice-Presidents (any one or more of whom may be given an additional designation of rank or function), a Treasurer and such Assistant Secretaries, such Assistant Treasurers and such other officers as the Board of Directors may from time to time deem proper. Each officer shall have such powers and duties as may be prescribed by these Bylaws and as may be assigned by the Board of Directors, the Chief Executive Officer or the President. Any two or more offices may be held by the same person except the offices of President and Secretary. None of the officers need be a stockholder or a resident of the State of Delaware or, except in the case of the Chairman, a director of the Corporation.

SECTION 2. Term of Office and Remuneration. Each officer shall hold office until his or her respective successor has been elected and qualified, until his or her death, or until he or she shall resign or shall have been removed in the manner hereinafter provided. Any vacancy in any office arising from any cause may be filled for the unexpired portion of the term by the Board of Directors. The remuneration of all officers of the Corporation may be fixed by the Board of Directors or in such manner as the Board of Directors shall provide.

SECTION 3. Resignation; Removal. Except as provided for in any employment agreement, any officer may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the Chief Executive Officer, the President or the Secretary, unless otherwise specified in the resignation. Any officer shall be subject to removal, with or without cause, at any time by the Board of Directors.

SECTION 4. Chairman of the Board of Directors. The Chairman, or, in his or her absence, the Lead Independent Director, shall preside at all meetings of the Board of Directors and shall have such other powers and duties as may from time to time be assigned by the Board of Directors.

SECTION 5. Chief Executive Officer. The Chief Executive Officer shall have such duties as customarily pertain to that office and shall have general supervision over the business and operations of the corporation, subject to the control of, and as may from time to time be assigned by, the Board of Directors. The Chief

Executive Officer may appoint and remove assistant officers and other agents and employees; and may execute and deliver in the name of the Corporation powers of attorney, contracts, bonds and other obligations and instruments, except where required or permitted by law to be otherwise executed and except where the execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. In the absence of the Chairman and the Lead Independent Director, the Chief Executive Officer shall preside at all meetings of the stockholders.

SECTION 6. Chief Financial Officer. The Chief Financial Officer shall have general financial supervision, management, direction and control of the business and affairs of the Corporation, subject to the control of, and as may from time to time be assigned by, the Board of Directors. The Chief Financial Officer shall be authorized to execute promissory notes, bonds, mortgages, leases and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise executed and except where the execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation.

SECTION 7. President. The President shall have such duties as customarily pertain to that office and shall have such other powers and duties as may from time to time be assigned by the Board of Directors. The President may, in consultation and agreement with the Chief Executive Officer, appoint and remove assistant officers and other agents and employees; and may execute and deliver in the name of the Corporation powers of attorney, contracts, bonds and other obligations and instruments.

SECTION 8. Vice-President. A Vice-President may execute and deliver in the name of the Corporation contracts and other obligations and instruments pertaining to the regular course of the duties of said office, and shall have such other authority as from time to time may be assigned by the Board of Directors, the Chief Executive Officer, the Chief Financial Officer or the President.

SECTION 9. Treasurer. The Treasurer shall have custody of the Corporation's funds and securities, shall keep full and accurate account of receipts and disbursements, shall deposit all monies and valuable effects in the name and to the credit of the Corporation in such depository or depositories as may be designated by the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, the Chief Executive Officer, the Chief Financial Officer or the President.

SECTION 10. Secretary. Except as otherwise provided in these Bylaws, the Secretary shall keep the minutes of all meetings of the Board of Directors and of the stockholders in books provided for that purpose, and he or she shall attend to the giving and service of all notices. The Secretary may sign with the Chief Executive Officer, the President, the Chief Financial Officer or a Vice-President, in the name of the Corporation, all contracts of the Corporation, all certificates for shares of stock of the Corporation and affix the seal of the Corporation thereto, and the Secretary shall have charge of the certificate books, transfer books, and stock papers. The Secretary shall in general have all the duties incident to the office of the Secretary, subject to the control of the Board of Directors, the Chief Executive Officer and the President.

SECTION 11. Assistant Officers. Any assistant officer shall have such powers and duties of the officer such assistant officer assists as such officer or the Board of Directors shall from time to time prescribe.

ARTICLE VI
Books and Records

SECTION 1. Location. The books and records of the Corporation may be kept at such place or places within or outside the State of Delaware as the Board of Directors or the respective officers in charge thereof may from time to time determine. The record books containing the names and addresses of all stockholders, the number and class of shares of stock held by each and the dates when they respectively became the owners of record thereof shall be kept by the Secretary as prescribed in the Bylaws and by such officer or agent as shall be designated by the Board of Directors.

SECTION 2. Fixing Date for Determination of Stockholders of Record.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, if permitted by these Bylaws, the Charter or applicable law, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and if no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery

to its registered office in the State of Delaware, its principal executive office (c/o the Secretary), or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by this Article VI, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted and if no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

ARTICLE VII

Certificates Representing Stock

SECTION 1. Certificates; Signatures. The shares of the stock in the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of stock in the Corporation shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. In the event shares of stock are represented by certificates, every holder of stock represented by uncertificated shares shall be entitled to have a certificate, signed by or in the name of the Corporation by the Chairman, the Chief Executive Officer or the President or Vice-President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, representing the number of shares registered in certificate form. Any and all signatures on any such certificate may be facsimiles and may be sealed with the seal of the Corporation or a facsimile thereof; provided, however, that no such seal of the Corporation shall be required thereon. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue. All certificates for shares of stock shall be consecutively numbered and the name of the holder of record of the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the books of the Corporation.

SECTION 2. Transfers of Stock. Upon compliance with provisions restricting the transfer or registration of transfer of shares of stock, if any, shares of capital stock shall be transferable on the books of the Corporation only by the holder of record thereof in person, or by duly authorized attorney, upon surrender and cancellation of certificates for a like number of shares, properly endorsed, and the payment of all taxes due thereon. If the shares of stock are represented by certificates, then upon surrender to the Corporation or the transfer agent of the Corporation of a certificate representing shares duly endorsed or accompanied by proper evidence of succession, assignment, or authority to transfer, the Corporation or its transfer agent shall issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction upon its books.

SECTION 3. Fractional Shares. The Corporation may, but shall not be required to, issue certificates for fractions of a share where necessary to effect authorized transactions, or the Corporation may pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or it may issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the Corporation or of its agent, exchangeable as therein provided for full shares, but such scrip shall not entitle the holder to any rights of a stockholder except as therein provided. The Board of Directors shall have power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificates representing shares of the Corporation.

SECTION 4. Lost, Stolen or Destroyed Certificates. The Board of Directors may direct the Corporation to issue a new certificate of stock in place of any certificate, theretofore issued by it, alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate or certificates representing shares to be lost or destroyed, and the Board of Directors may require the owner of any lost, stolen or destroyed certificate, or his legal representative, as a condition precedent to the issuance thereof, to advertise the same in such manner as it shall require and/or to give the Corporation a bond with a surety or sureties in such sum sufficient to indemnify the Corporation against any claim or expense that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

SECTION 5. Registered Stockholders. The Corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

SECTION 6. Regulations. The Board of Directors shall have the power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer, and registration or the replacement of certificates for shares of stock of the Corporation.

SECTION 7. Legends. The Board of Directors shall have the power and authority to provide that certificates representing shares of stock bear such legends as the Board of Directors deems necessary to assure that the Corporation does not become liable for violations of federal or state securities laws or other applicable law.

ARTICLE VIII

Dividends

Subject always to the provisions of applicable law and the Charter, the Board of Directors shall have full power to determine whether any, and, if any, what part of any, funds legally available for the payment of dividends shall be declared as dividends and paid to stockholders; the division of the whole or any part of such funds of the Corporation shall rest wholly within the lawful discretion of the Board of Directors, and it shall not be required at any time, against such discretion, to divide or pay any part of such funds among or to the stockholders as dividends or otherwise, and before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall think conducive to the interest of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created. Notwithstanding the foregoing, the declaration and distribution of any dividends may not be in contravention of the DGCL.

ARTICLE IX

Notice

SECTION 1. Method. Whenever by statute, the Charter, or these Bylaws, notice is required to be given to any committee member, director, or stockholder and no provision is made as to how such notice shall be given, personal notice shall not be required and any such notice may be given (a) in writing, by mail, postage prepaid, addressed to such committee member, director, or stockholder at his or her address as it appears on the books or (in the case of a stockholder) the stock transfer records of the Corporation, or (b) by any other method permitted by law (including, without limitation, by overnight courier service, telegram, telex, or facsimile or other form of electronic transmission, provided such other form of electronic transmission creates a record that may be retained, retrieved, and reviewed by the recipient thereof, may be directly reproduced in paper form by such recipient, and such recipient has consented to the delivery of notice by such method). Any notice required or permitted to be given by mail shall be deemed to be delivered and given at the time when the same is deposited in the United States mail as aforesaid. Any notice required or permitted to be given by overnight courier service shall be deemed to be delivered and given at the time delivered to such service with all charges prepaid and addressed as aforesaid. Any notice required or permitted to be given by telegram, telex, or facsimile shall be deemed to be delivered and given at the time transmitted with all charges prepaid and addressed as aforesaid.

SECTION 2. Waiver. Whenever any notice is required to be given to any stockholder, director, or committee member of the Corporation by statute, the Charter, or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Attendance of a stockholder, director, or committee member at a meeting shall constitute a waiver of notice of such meeting, so long as such stockholder, director or committee member does not object to the transaction of any business on the ground that the meeting is not lawfully called or convened.

ARTICLE X

Bank Accounts, Drafts, Contracts, Etc.

SECTION 1. Bank Accounts and Drafts. In addition to such bank accounts as may be authorized by the Board of Directors, the Chief Financial Officer or any person designated by the Chief Financial Officer, whether or not an employee of the Corporation, may authorize such bank accounts to be opened or maintained in the name and on behalf of the Corporation as he or she may deem necessary or appropriate, payments from such bank accounts to be made upon and according to the check of the Corporation in accordance with the written instructions of the Chief Financial Officer, or other person so designated by the Treasurer.

SECTION 2. Contracts. The Board of Directors may authorize any person or persons, in the name and on behalf of the Corporation, to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances.

SECTION 3. Proxies; Powers of Attorney; Other Instruments. The Chairman, the Chief Executive Officer and the President or any other person designated by any of them shall have the power and authority to execute and deliver proxies, powers of attorney and other instruments on behalf of the Corporation in connection with the rights and powers incident to the ownership of stock by the Corporation. The Chairman, the Chief Executive Officer and the President or any other person authorized by proxy or power of attorney executed and delivered by either of them on behalf of the Corporation may attend and vote at any meeting of stockholders of any company in which the Corporation may hold stock, and may exercise on behalf of the Corporation any and all of the rights and powers incident to the ownership of such stock at any such meeting, or otherwise as specified in the proxy or power of attorney so authorizing any such person. The Board of Directors, from time to time, may confer like powers upon any other person.

SECTION 4. Financial Reports. The Board of Directors may appoint the Chief Financial Officer or other fiscal officer and/or the Secretary or any other officer to cause to be prepared and furnished to stockholders entitled thereto any special financial notice and/or financial statement, as the case may be, which may be required by any provision of law.

ARTICLE XI

Miscellaneous

SECTION 1. Ratification. Any transaction, questioned in any law suit on the ground of lack of authority, defective or irregular execution, adverse interest of director, officer or stockholder, non-disclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board of Directors or by the stockholders, and if so ratified shall have the same force and effect as if the questioned transaction had been originally duly authorized. Such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

SECTION 2. Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation and the year of its incorporation, and shall be in such form and contain such other words and/or figures as the Board of Directors shall determine. The corporate seal may be used by printing, engraving, lithographing, stamping or otherwise making, placing or affixing, or causing to be printed, engraved, lithographed, stamped or otherwise made, placed or affixed, upon any paper or document, by any process whatsoever, an impression, facsimile or other reproduction of said corporate seal.

SECTION 3. Fiscal Year. The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors. Unless otherwise fixed by the Board of Directors, the fiscal year of the Corporation shall be the calendar year.

SECTION 4. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, limited liability company, sole proprietorship, trust, employee benefit plan or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

SECTION 5. Telephone Meetings. Stockholders (acting for themselves or through a proxy), members of the Board of Directors, and members of a committee of the Board of Directors may participate in and hold a meeting of such stockholders, Board of Directors, or committee by means of a conference telephone or similar communications equipment by means of which persons participating in the meeting can

hear each other, and participation in a meeting pursuant to this section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

SECTION 6. Invalid Provisions. If any part of these Bylaws shall be held invalid or inoperative for any reason, the remaining parts, so far as it is possible and reasonable, shall remain valid and operative.

SECTION 7. Amendments. Except as set forth below, these Bylaws may be amended, modified or repealed or new bylaws may be adopted by the affirmative vote of the holders of at least a majority of the voting power of all shares of capital stock of the Corporation or by the Board of Directors at any annual or regular meeting of the stockholders or the Board of Directors, respectively, or at any special meeting of the stockholders or the Board of Directors if notice of such alteration, amendment, repeal, or adoption of new bylaws be contained in the notice of such meeting. Notwithstanding the foregoing, Article II, Sections 2, 7(b), 7(c) and 9; Article III, Sections 2(a), 2(b), 3, 7, 10(b), 11 and 13 and this Article XI, Section 7 of these Bylaws may not be amended, modified or repealed (or any bylaw adopted inconsistent with such provisions) by the stockholders without the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the voting power of all shares of capital stock of the Corporation entitled to vote generally, then outstanding, voting together as a single class at any annual or special meeting of the stockholders in which notice of such amendment, modification, repeal or adoption is contained.

DAVE & BUSTER'S ENTERTAINMENT, INC.

THE COMPANY WILL FURNISH WITHOUT CHARGE TO EACH SHAREHOLDER WHO SO REQUESTS, A SUMMARY OF THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OF THE COMPANY AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND RIGHTS, AND THE VARIATIONS IN RIGHTS, PREFERENCES AND LIMITATIONS DETERMINED FOR EACH SERIES, WHICH ARE FIXED BY THE CERTIFICATE OF INCORPORATION OF THE COMPANY, AS AMENDED, AND THE RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY, AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO DETERMINE VARIATIONS FOR FUTURE SERIES. SUCH REQUEST MAY BE MADE TO THE OFFICE OF THE SECRETARY OF THE COMPANY OR TO THE TRANSFER AGENT. THE BOARD OF DIRECTORS MAY REQUIRE THE OWNER OF A LOST OR DESTROYED STOCK CERTIFICATE, OR HIS LEGAL REPRESENTATIVES, TO GIVE THE COMPANY A BOND TO INDEMNIFY IT AND ITS TRANSFER AGENTS AND REGISTRARS AGAINST ANY CLAIM THAT MAY BE MADE AGAINST THEM ON ACCOUNT OF THE ALLEGED LOSS OR DESTRUCTION OF ANY SUCH CERTIFICATE.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common	UNIF GIFT MIN ACT - _____ (Custodian) _____ (Minor)
TEN ENT - as tenants by the entireties	under Uniform Gifts to Minors Act _____ (State)
JT TEN - as joint tenants with right of survivorship and not as tenants in common	UNIF TRF MIN ACT - _____ (Custodian (until age _____)) _____ (Minor) under Uniform Transfers to Minors Act _____ (State)

Additional abbreviations may also be used though not in the above list.

For value received, _____ hereby sell, assign and transfer unto _____

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING POSTAL ZIP CODE, OF ASSIGNEE)

_____ of the common stock represented by the within Certificate, and do hereby irrevocably constitute and appoint _____

Shares

to transfer the said stock on the books of the within-named Company with full power of substitution in the premises.

Attorney

Dated: _____ 20____

Signature: _____

Signature: _____

Notice: The signature to this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Signature(s) Guaranteed: Medallion Guarantee Stamp
THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (Bank, Broker/Dealer, Savings and Loan Association and Credit Union) WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO S.E.C. RULE 17Ad-15.

SECURITY INSTRUCTIONS

THIS IS WATERMARKED PAPER. DO NOT ACCEPT IF THERE IS NO WATERMARK. HOLD TO LIGHT TO VERIFY WATERMARK.



The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis. If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

15342021

STOCKHOLDERS' AGREEMENT

DATED AS OF

[•], 201[•]

AMONG

DAVE & BUSTER'S ENTERTAINMENT, INC.

AND

THE STOCKHOLDERS PARTY HERETO

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THIS STOCKHOLDERS' AGREEMENT (this "*Agreement*")

dated as of [•] among:

- (i) Dave & Buster's Entertainment, Inc. (f/k/a Dave & Buster's Parent, Inc.), a Delaware corporation (the "*Company*"); and
- (ii) Oak Hill Capital Partners III, L.P. and Oak Hill Capital Management Partners III, L.P. (collectively, with their permitted assignees as contemplated by Section 4.01(b), "*Oak Hill*").

WITNESSETH:

WHEREAS, in connection with underwritten initial public offering of Common Stock of the Company (the "*Initial Public Offering*"), it is the intention of the parties hereto to enter into this Agreement to govern Oak Hill's rights with respect to the Company.

NOW, THEREFORE, for good and valuable consideration the sufficiency and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

SECTION 1.01. Definitions.

(a) The following terms, as used herein, have the following meanings:

"*Affiliate*" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person; provided that no securityholder of the Company shall be deemed an Affiliate of any other securityholder solely by reason of an investment in the Company. For the purpose of this definition, the term "*control*" (including, with correlative meanings, the terms "*controlling*", "*controlled by*" and "*under common control with*"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"*Board*" means the board of directors of the Company.

"*Business Day*" means any day except a Saturday, Sunday or other day on which commercial banks in New York City are authorized by law to close.

"*Charter*" means the Second Amended and Restated Certificate of Incorporation of the Company, as the same may be amended from time to time.

"*Common Shares*" means shares of Common Stock.

“Common Stock” means the Company’s common stock, par value \$0.01 per share, and any stock into which such Common Stock may thereafter be converted, changed, reclassified or exchanged.

“Company Securities” means (i) the Common Stock, (ii) any preferred stock, (iii) any other common stock issued by the Company and (iv) any securities convertible into or exchangeable for, or options, warrants or other rights to acquire, Common Stock or any other common stock issued by the Company.

“Designation Number” means (i) the product of (x) Oak Hill’s aggregate ownership interest in the Company multiplied by (y) the then current number of directors on the Board and (ii) then rounded to the next highest number of directors if the product of clause (x) and (y) does not equal a whole number. For illustrative purposes only, if Oak Hill’s aggregate ownership percentage is 55% and there are 8 directors, the product of (x) and (y) would equal 4.4 and the Designation Number would be 5 directors.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Oak Hill Nominees” means the members of the Board designated by Oak Hill.

“Person” means an individual, corporation, limited liability company, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“Relevant Stock Exchange” means the primary U.S. stock exchange on which the Company’s Common Stock is listed.

“Securities Act” means the Securities Act of 1933, as amended.

“Stockholder” means each Person (other than the Company) who, at any relevant determination date, shall be a party to or bound by this Agreement (as may be amended from time to time) so long as such Person shall “beneficially own” (as such term is defined in Rule 13d-3 of the Exchange Act) any Company Securities.

“Subsidiary” means, with respect to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

“Transfer” means, with respect to any Company Securities, (i) when used as a verb, to sell, assign, dispose of, exchange, pledge, encumber, hypothecate or otherwise transfer such Company Securities or any participation or interest therein, whether directly or indirectly, or agree or commit to do any of the foregoing and (ii) when used as a noun, a direct or indirect sale, assignment, disposition, exchange, pledge, encumbrance, hypothecation, or other transfer of such Company Securities or any participation or interest therein or any agreement or commitment to do any of the foregoing.

(b) Each of the following terms is defined in the Section set forth opposite such term:

<u>TERM</u>	<u>SECTION</u>
Agreement	Preamble
Company	Preamble
Confidential Information	3.01(b)
Initial Public Offering	Recitals
Oak Hill	Preamble
Replacement Nominee	2.02

(c) Other Definitional and Interpretive Matters. Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

Dollars. Any reference in this Agreement to \$ shall mean U.S. dollars.

Exhibits/Schedules. The Exhibits and Schedules to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement. All Exhibits, Annexes and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule, Annex or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified.

Herein. The words such as “*herein*,” “*hereinafter*,” “*hereof*,” and “*hereunder*” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

Including. Wherever the word “*include*,” “*includes*,” or “*including*” is used in this Agreement, it shall be deemed to be followed by the words “*without limitation*”.

ARTICLE 2 CORPORATE GOVERNANCE

SECTION 2.01. Board of Directors; Board Nominees; Committees.

(a) Concurrently with the Initial Public Offering, (i) the Board of the Company shall consist of the following eight (8) directors: Tyler J. Wolfram, Kevin M. Mailender, Alan J. Lacy, David A. Jones, Kevin M. Sheehan, Jonathan S. Halkyard, Michael J. Griffith and Stephen M. King, (ii) the Chairman of the Board shall be Tyler J. Wolfram and (iii) the lead independent director shall be Alan J. Lacy.

(b) Subject to applicable law and the Relevant Stock Exchange rules, Oak Hill shall be entitled to designate directors to serve on the Board proportionate to Oak Hill’s aggregate ownership interest in the Company, which such number of director designees shall be equal to the Designation Number; *provided* that as long as Oak Hill owns 5% or more of the issued and outstanding Common Stock of the Company, Oak Hill shall be entitled to designate to the Board at least one (1) director. As of the date hereof, Tyler J. Wolfram and Kevin M. Mailender are the Oak Hill Nominees.

(c) Subject to applicable law and the Relevant Stock Exchange rules, (1) the Board shall have at least the following committees and (2) subject to Section 2.01(c)(i) and Section (c)(ii), each committee of the Board shall have at least one (1) member designated by Oak Hill.

(i) Nominating and Corporate Governance Committee which shall consist solely of members designated by Oak Hill. The members of the Nominating and Corporate Governance Committee shall initially be [•].

(ii) Audit Committee which shall consist of members appointed by the Board. The members of the Audit Committee shall initially be Kevin M. Sheehan, Jonathan S. Halkyard and Michael J. Griffith. The Chairman of the Audit Committee shall initially be Kevin M. Sheehan.

(iii) Compensation Committee which shall consist of members appointed by the Board. The members of the Compensation Committee shall initially be Tyler J. Wolfram, David A. Jones, Alan J. Lacy, Michael J. Griffith and Jonathan S. Halkyard. The Chairman of the Compensation Committee shall initially be David A. Jones.

(iv) Plan Subcommittee of the Compensation Committee which shall consist of members appointed by the Board. The members of the Plan Committee shall initially be Michael J. Griffith and Jonathan S. Halkyard.

(d) The Company agrees to cause each individual designated pursuant to this Section 2.01 or Section 2.02 to be nominated to serve as a director on the Board, or as Chairman of the Board, and to take all other necessary actions (including calling a special meeting of the Board and/or stockholders or expanding the size of the Board) to ensure that the composition of the Board and any committee of the Board, as applicable, is as set forth in this Section 2.01 and to otherwise implement the provisions of this Section 2.01 and Section 2.02. For the avoidance of doubt, the Company agrees to expand the size of the Board to ensure that the composition of the Board is as set forth in Section 2.01(b).

SECTION 2.02. Vacancies. If, as a result of death, disability, retirement, resignation, removal or otherwise, there shall exist or occur any vacancy of an Oak Hill Nominee on the Board, Oak Hill may designate another individual (the “**Replacement Nominee**”) to fill such vacancy and serve as a director on the Board.

SECTION 2.03. Reimbursement of Director Expenses. The Company will pay all reasonable out-of-pocket expenses incurred by the Oak Hill Nominees in connection with traveling to and from and attending meetings of the Board and while conducting business at the request of the Company.

SECTION 2.04. Reimbursement of Certain Oak Hill Expenses. The Company shall reimburse Oak Hill and its Affiliates for all reasonable direct and indirect costs and out of pocket expenses incurred by Oak Hill and its Affiliates and their respective employees, representatives and consultants in connection with monitoring and maintaining Oak Hill’s investment in the Company, including Oak Hill and its Affiliates reasonable direct and indirect costs and out-of-pocket expenses incurred in connection with any regulatory filings of the Company involving Oak Hill and/or its Affiliates (including any liquor license filings), costs and out-of-pocket expenses of monitoring and maintaining this Agreement, the agreements entered into in connection with the Initial Public Offering and the transaction contemplated hereby and thereby (including, enforcement or amendment thereof), the cost of maintaining holding companies organized to facilitate Oak Hill’s investment in the Company and the cost (including allocable overhead) of providing insurance, human resources, accounting, legal and IT support and other similar resource services to the Company.

SECTION 2.05. Corporate Opportunities. In furtherance of, and without limiting what is set forth in the Charter, each of the parties hereto acknowledges that Oak Hill, its Affiliates and any related investment funds and portfolio companies may review the business plans and related proprietary information of any enterprise, including any enterprise which may have products or services which compete directly or indirectly with those of the Company or any of its Affiliates or Subsidiaries and may trade in the

securities of such enterprise. Nothing in this Agreement shall preclude or in any way restrict Oak Hill, its Affiliates or any related investment funds or portfolio companies from investing or participating in any particular enterprise, or trading in the securities thereof whether or not such enterprise has products or services that compete with those of the Company or any of its Affiliates or Subsidiaries. Notwithstanding anything to the contrary herein, the Company expressly acknowledges and agrees that: (a) Oak Hill, members of the Board designated by Oak Hill and Affiliates or portfolio companies of Oak Hill, have the right to, and shall have no duty (contractual or otherwise) not to, directly or indirectly, engage in the same or similar business activities or lines of business as the Company or any of its Affiliates or Subsidiaries; and (b) in the event that Oak Hill, members of the Board designated by Oak Hill or any Affiliate or portfolio company of Oak Hill acquires knowledge of a potential transaction or matter that may be a corporate opportunity for any of the Company or any of its Affiliates or Subsidiaries, Oak Hill, members of the Board designated by Oak Hill or Affiliates or portfolio companies of Oak Hill shall have no duty (contractual or otherwise) to communicate or present such corporate opportunity to the Company or any of its Affiliates or Subsidiaries, as the case may be (*provided, however*, that the foregoing shall not apply to any person who is a director or officer of the Company if such business opportunity is expressly offered to such director or officer solely in his or her capacity as a director or officer of the Company), and, notwithstanding any provision of this Agreement to the contrary, shall not be liable to the Company or any of its Affiliates or Subsidiaries or any stockholders for breach of any duty (contractual or otherwise) by reason of the fact that Oak Hill, any Affiliate thereof or related investment fund or portfolio company thereof, directly or indirectly, pursues or acquires such opportunity for itself, directs such opportunity to another Person, or does not present such opportunity to the Company or any of its Affiliates or Subsidiaries.

ARTICLE 3 CONFIDENTIAL INFORMATION

SECTION 3.01. Confidentiality.

(a) The Company acknowledges and agrees that (i) Oak Hill may disclose Confidential Information to its Affiliates, representatives and advisors, (ii) any Oak Hill Nominee may disclose Confidential Information to Oak Hill and its Affiliates, representatives and advisors, (iii) Oak Hill and its Affiliates may disclose Confidential Information if requested or required by law, judicial or governmental order, deposition, interrogatory, subpoena, civil investigation, demand, discovery request or similar process and (iv) Oak Hill and its Affiliates may disclose Confidential Information to any potential purchaser of the Company that executes a customary confidentiality agreement.

(b) “**Confidential Information**” shall mean any confidential or proprietary information relating to the business or affairs of the Company or any of its Affiliates, including, but not limited to, information relating to financial statements, customer identities, potential customers, employees, sales representatives, suppliers, servicing methods, equipment programs, strategies and information, analyses, profit margins or other proprietary information used by the Company or any of its Affiliates;

provided, however, that Confidential Information does not include any information which is in the public domain or becomes known in the industry through no wrongful act on the part of Oak Hill; *provided* that Confidential Information shall not include information that (i) is or becomes generally known to the public other than as a result of a disclosure by Oak Hill in violation of this Agreement, (ii) is or was available to Oak Hill on a non-confidential basis prior to its disclosure to Oak Hill, or (iii) was or becomes available to Oak Hill on a non-confidential basis from a source other than the Company, which source is or was (at the time of receipt of the relevant information) not bound by a confidentiality agreement with the Company or another person.

ARTICLE 4 MISCELLANEOUS

SECTION 4.01. Binding Effect; Assignability; Benefit.

(a) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, legal representatives and permitted assigns.

(b) Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by any party hereto pursuant to any Transfer of Company Securities or otherwise; *provided, however*, that in connection with any Transfer of Company Securities by Oak Hill (i) to any of its Affiliates or (ii) in a privately negotiated transaction, in each case Oak Hill may assign all or any portion of its rights as set forth in Article 2 and Article 3 to any transferee who agrees to be bound by this Agreement.

(c) Nothing in this Agreement, expressed or implied, is intended to confer on any Person other than the parties hereto, and their respective heirs, successors, legal representatives and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

SECTION 4.02. Notices. All notices, requests and other communications to any party shall be in writing and shall be delivered in person, mailed by certified or registered mail, return receipt requested, or sent by facsimile transmission,

If to the Company, to:

Dave & Buster's Entertainment, Inc.
2481 Manana Drive
Dallas, Texas 75220
Attention: Jay L. Tobin, Esq.
Fax: (214) 357-1536

With a copy to:

Oak Hill Capital Management, LLC
65 East 55th Street, 32nd Floor
New York, NY 10022
Attention: John R. Monsky, Esq.
Fax: (212) 527-8450

and

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: Douglas P. Warner, Esq.
Fax: (212) 310-8007

If to Oak Hill, to:

Oak Hill Capital Management, LLC
65 East 55th Street, 32nd Floor
New York, NY 10022
Attention: John R. Monsky, Esq.
Fax: (212) 527-8450

With a copy to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: Douglas P. Warner, Esq.
Fax: (212) 310-8007

or, in each case, at such other address or fax number as such party may hereafter specify for the purpose of notices hereunder by written notice to the other parties hereto. All notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt. Any notice, request or other written communication sent by facsimile transmission shall be confirmed by certified or registered mail, return receipt requested, posted within one (1) Business Day, or by personal delivery, whether courier or otherwise, made within two (2) Business Days after the date of such facsimile transmissions.

Any Person that hereafter becomes a Stockholder shall provide its address and fax number to the Company, which shall promptly provide such information to each other Stockholder.

SECTION 4.03. Waiver; Amendment; Termination.

(a) No provision of this Agreement may be waived except by an instrument in writing executed by the party against whom the waiver is to be effective. No provision of this Agreement may be amended or otherwise modified except by an instrument in writing executed by the Company and Oak Hill.

(b) This Agreement shall terminate upon, (i) the written request of Oak Hill or (ii) such time as Oak Hill or any transferee of Oak Hill who agrees to be bound by this Agreement owns less than 5% in the aggregate of the issued and outstanding Common Stock of the Company.

SECTION 4.04. Fees and Expenses. Each party shall pay its own costs and expenses incurred in connection with the preparation and execution of this Agreement.

SECTION 4.05. Governing Law. This Agreement, and all claims or causes of action (whether at law, in equity, in contract, in tort or otherwise) based upon, arising out of, related to or otherwise in connection with this Agreement or the transactions contemplated hereby, shall be exclusively governed by, and construed in accordance with, the internal laws of the State of Delaware, without giving effect to principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of laws of another jurisdiction (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement).

SECTION 4.06. Jurisdiction. The parties hereby agree that any suit, action or proceeding (whether at law, in equity, in contract, in tort or otherwise) seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement) shall be exclusively brought in the United States District Court for the Southern District of New York or any New York State court sitting in New York City, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any case of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of New York, and each of the parties hereby irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought

in an inconvenient form. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 4.03 shall be deemed effective service of process on such party.

SECTION 4.07. Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING (WHETHER AT LAW, IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

SECTION 4.08. Specific Enforcement; Cumulative Remedies. The parties hereto acknowledge that money damages may not be an adequate remedy for violations of this Agreement and that any party, in addition to any other rights and remedies which the parties may have hereunder or at law or in equity, may, in his or its sole discretion, apply to a court of competent jurisdiction for specific performance or injunction or such other relief as such court may deem just and proper in order to enforce this Agreement or prevent any violation hereof and, to the extent permitted by applicable law, each party waives any objection to the imposition of such relief. All rights, powers and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise or beginning of the exercise of any thereof by any party shall not preclude the simultaneous or later exercise of any other such rights, powers or remedies by such party.

SECTION 4.09. Entire Agreement. This Agreement and any exhibits and other documents referred to herein constitute the entire agreement and understanding among the parties hereto in respect of the subject matter hereof and thereof and supersede all prior and contemporaneous agreements and understandings, both oral and written, among the parties hereto, or between any of them, with respect to the subject matter hereof and thereof.

SECTION 4.10. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner so that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

SECTION 4.11. Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

SECTION 4.12. No Recourse. Notwithstanding anything that may be expressed or implied in this Agreement, and notwithstanding the fact that the entities comprising Oak Hill are two limited partnerships, each party to this Agreement covenants, agrees and acknowledges that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement shall be had against any of Oak Hill's current or future directors, officers, employees, general or limited partners, members, managers or trustees, or any partner, member, manager or trustee, as such, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any of Oak Hill's current or future officers, agents, employees, directors, managers, members, or any Affiliates or assignees thereof, as such, for any obligation of Oak Hill under this Agreement or any documents or instruments delivered in connection with this Agreement for any claim based on, in respect of or by reason of such obligations or their creation.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

DAVE & BUSTER'S ENTERTAINMENT, INC.

By: _____

Name:

Title:

OAK HILL CAPITAL PARTNERS III, L.P.

By: OHCP GenPar III, L.P.,
its General Partner

By: OHCP MGP Partners III, L.P.,
its General Partner

By: OHCP MGP III, Ltd.,
its General Partner

By: _____

Name: John R. Monsky

Title:

OAK HILL CAPITAL MANAGEMENT PARTNERS III, L.P.

By: OHCP GenPar III, L.P.,
its General Partner

By: OHCP MGP Partners III, L.P.,
its General Partner

By: OHCP MGP III, Ltd.,
its General Partner

By: _____

Name: John R. Monsky

Title:

[SIGNATURE PAGE TO STOCKHOLDERS AGREEMENT]

Weil, Gotshal & Manges LLP

767 Fifth Avenue
New York, NY 10153-0119
+1 212 310 8000 tel
+1 212 310 8007 fax

August 27, 2012

Dave & Buster's Entertainment, Inc.
2481 Mañana Drive
Dallas, Texas 75220

Ladies and Gentlemen:

We have acted as counsel to Dave & Buster's Entertainment, Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission of the Company's Registration Statement on Form S-1, File No. 35-2382255, (as amended, the "Registration Statement"), under the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration of the offer, issuance and sale by the Company of the shares of common stock, par value \$0.01 per share, of the Company specified in the Registration Statement (the "Shares"). The Shares are to be issued by the Company pursuant to an underwriting agreement among the Company and the Underwriters named therein (the "Underwriting Agreement"), the form of which will be filed as Exhibit 1.1 to the Registration Statement.

In so acting, we have examined originals or copies (certified or otherwise identified to our satisfaction) of (i) the Registration Statement, (ii) the prospectus contained in the Registration Statement (the "Prospectus"), (iii) the form of the Second Amended and Restated Certificate of Incorporation of the Company to be filed with the Secretary of State of the State of Delaware prior to the consummation of the initial public offering contemplated by the Registration Statement, filed as Exhibit 3.1 to the Registration Statement, (iv) the form of the Second Amended and Restated Bylaws of the Company to be effective prior to the consummation of the initial public offering contemplated by the Registration Statement, filed as Exhibit 3.2 to the Registration Statement, (v) the form of Common Stock Certificate of the Company, filed as Exhibit 4.1 to the Registration Statement, and (vi) such corporate records, agreements, documents and other instruments, and such certificates or comparable documents of public officials and of officers and representatives of the Company, and have made such inquiries of such officers and representatives, as we have deemed relevant and necessary as a basis for the opinions hereinafter set forth.

In such examination, we have assumed the Certificate of Incorporation that will be filed with the Secretary of State of the State of Delaware will be substantially identical to the form of the Certificate of Incorporation of the Company reviewed by us, the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed or photostatic copies and the authenticity of the originals of such latter documents. As to all questions of fact material to this opinion that have not been independently established, we have relied upon certificates or comparable documents of officers and representatives of the Company.

Based on the foregoing, and subject to the qualifications stated herein, we are of the opinion that the Shares, when issued and sold as contemplated in the Registration Statement, and upon payment and delivery in accordance with the Underwriting Agreement, will be validly issued, fully paid and non-assessable.

The opinion expressed herein is limited to the corporate laws of the State of Delaware and we express no opinion as to the effect on the matters covered by this letter of the laws of any other jurisdiction.

We hereby consent to the filing of this letter as an exhibit to the Registration Statement and to the reference to our firm under the caption "Legal Matters" in the Prospectus.

Very truly yours,

/s/ Weil, Gotshal & Manges LLP

**AMENDED AND RESTATED
EMPLOYMENT AGREEMENT**

This Amended and Restated Employment Agreement (this "Agreement") is entered into on the [_____] day of [____], and effective as of the Effective Date (as defined below), between Dave & Buster's Management Corporation, Inc., a Delaware corporation ("D&B Management"), Dave & Buster's, Inc., a Missouri corporation ("D&B"), and the ("Employee"). D&B Management and D&B are collectively referred to herein as the "Company." D&B Management, D&B and the Employee are collectively referred to herein as the "Parties".

WHEREAS, D&B and Employee entered into that certain Amended and Restated Employment Agreement, dated as of [_____] (the "Employment Agreement");

WHEREAS, in connection with the Stock Purchase Agreement, dated as of the date hereof (the "Purchase Agreement"), by and among Dave & Buster's Holdings, Inc., Games Acquisition Corp. ("Holdings") and certain other parties thereto, it is the intention of the Company and the Employee to amend and restate the Employment Agreement in its entirety as set forth herein, which shall be effective upon the consummation of the transactions contemplated by the Purchase Agreement with no further action required on part of any Party (the "Effective Date"), and, at the Effective Date, the Employment Agreement shall be deemed to be terminated and of no further force or effect;

WHEREAS, at the Effective Date, (i) the Employee shall receive options from common stock in Holdings ("Options") as part of a pool of Options pursuant to the Holdings' 2010 Management Incentive Plan (the "Incentive Plan") and a Stock Option Grant Agreement (the "Option Grant Agreement") and (ii) the Employee shall invest in Holdings pursuant to a Reinvestment Letter Agreement (the "Reinvestment Letter Agreement") and collectively with the Incentive Plan and the Option Grant Agreement, the "Equity Arrangements", in each case, as a result of [his/her] position with the Company and in consideration for, among other things, protection of the Confidential Information (as defined below);

WHEREAS, the Parties acknowledge and agree that the services of the Employee are of a special and unique character, and in the performance of duties for the Company, the Employee has been and will be provided additional Confidential Information, pursuant to and in reliance on the restrictive covenant obligations and the restrictions on disclosure of the Confidential Information set forth in Paragraph 7;

WHEREAS, the Company desires to be assured that the Confidential Information and goodwill of the Company will be preserved for the exclusive benefit of the Company and that, as a material incentive for the Company to enter into this Agreement, as well as in exchange for the consideration specified herein (including, without limitation substantial amounts of compensation (including, without limitation, as obtained through the Equity Arrangements), benefits and access to the Confidential Information, in each case, as set forth herein), and employment of the Employee under this Agreement, the Employee acknowledges and agrees to be bound by the restrictive covenant obligations and the restrictions on disclosure of the Confidential Information set forth in Paragraph 7;

WHEREAS, the Parties acknowledge and agree that the restrictive covenant obligations and the restrictions on disclosure of the Confidential Information set forth in Paragraph 7 are essential to the continued growth and stability of the Company's business, good will, customer base and to the continuing viability of its endeavors, and are a material inducement to the Company entering into this Agreement; and

WHEREAS, the Parties acknowledge and agree that the Company would be irreparably harmed if their Confidential Information were disclosed by the Employee.

NOW, THEREFORE, for and in consideration of the promises herein contained, the provision of Confidential Information and other good and valuable consideration, the sufficiency of which is hereby acknowledged, D&B, D&B Management, and Employee agree as follows:

1. Employment/Duties. D&B Management agrees to employ Employee and D&B agrees that Employee shall serve as [_____] of D&B. Employee will be responsible for performing those duties that are customarily associated with the position of [_____] and other such reasonable duties that are assigned by the Company from time-to-time. The Company or its Affiliates (as defined below) will provide appropriate training to Employee to permit [him/her] to perform [his/her] duties competently.

2. Term of Agreement. This Agreement shall be in effect for two (2) years from the Effective Date of this Agreement unless it is terminated earlier under the terms of Paragraph 8; provided, however, that commencing on the date two (2) years after the Effective Date, and on each annual anniversary of such date (such date and each annual anniversary thereof shall be hereinafter referred to as the "Renewal Date"), the term of this Agreement shall be automatically extended for a one year period unless it is terminated earlier under the terms of Paragraph 8. The Parties agree that unless specifically stated otherwise, the obligations created in Paragraphs 7, 9, 10, 11, 12 and 18 will survive the termination of this Agreement and of Employee's employment with D&B Management.

3. Employee's Responsibilities. Employee agrees that unless specifically stated otherwise, during the term of Employee's employment by D&B Management, Employee will devote Employee's full business time and best efforts and abilities to the performance of [his/her] duties for the Company. Employee agrees to act in the best interest of the Company at all times. Employee will act in accordance with the highest professional standards of ethics and integrity. Employee agrees to use Employee's best efforts and skills to preserve the business of the Company and the goodwill of its employees and persons having business relations with the Company. Employee will comply with all applicable laws and all of the Company's and its Affiliates' then current policies and procedures. Notwithstanding anything contained herein to the contrary, if (a) Employee complies with the terms and provisions of D&B's Code of Business Ethics, as the same may be revised from time-to-time and (b) Employee's activities do not interfere with Employee's obligations to the Company, then, during the term of Employee's employment by D&B Management, Employee may (x) engage in charitable, civic, fraternal and professional activities, (y) give lectures on behalf of educational or for-profit institutions, and (z) manage personal investments, then, during the term of Employee's employment by D&B Management, Employee may (x) engage in charitable, civic, fraternal and professional activities, (y) give lectures on behalf of educational or for-profit institutions, and (z) manage personal investments; provided that Employee shall disclose any conflicts of interest that cause Employee's personal endeavors to be in material conflict with the business of the Company and/or its Affiliates.

4. No Limitations. Employee warrants and represents that there is no contractual, judicial or other restraint that impairs Employee's right or legal ability to enter into this Agreement and to carry out Employee's duties and responsibilities to the Company, Holdings and its subsidiaries.

5. Compensation and Benefits.

(a) Base Salary. During the term of this Agreement, D&B Management will pay to Employee a base salary of \$[_____] per year. The base salary will be paid bi-weekly on regularly scheduled paydays determined by the Company. Employee shall be given an annual performance evaluation and, as determined by the Board of Directors of D&B Management, may receive an annual salary increase.

(b) Annual Bonus. During the term of this Agreement, the Employee will be eligible to receive an annual bonus as approved on annual basis by the Board of Directors of D&B Management and, if so approved, as determined by the Company based upon the attainment of a combination of individual and Company goals during a fiscal year set forth in a bonus plan approved by the Board of Directors of D&B Management, payable in accordance with such bonus plan. Employee's individual participation percentage in the bonus plan is equal to 50% of such Employee's base salary for the fiscal year.

(c) Automobile. The Employee shall be entitled to an automobile allowance to be applied toward the use of an automobile for business purposes during the term of this Agreement, in an amount equal to \$10,000 per year, payable in accordance with the Company's standard payroll procedures.

(d) Retirement and Welfare Plans. Employee shall be eligible to participate in any profit sharing, qualified and nonqualified retirement plans, and any health, life, accident, disability insurance, sick leave, supplemental medical reimbursement insurance (Exec-U-Care) or other benefit plans or programs made available to similarly situated employees of the Company as of the Effective Date (collectively, the "Plans"), as long as they are kept in force by the Company and provided that Employee meets the eligibility requirements of the respective Plans. Nothing contained herein shall limit the right of the Company, in its sole and absolute discretion, to modify, amend or discontinue any of the Plans.

(e) Vacation. Subject to the Company's generally applicable policies relating to vacations, Employee shall be entitled to paid vacation commensurate with Employee's position and tenure with the Company, but in no event less than four (4) weeks paid vacation during each calendar year.

(f) Office and Support Staff. To the extent reasonably practicable, the Company shall endeavor to supply the Employee (i) with all equipment, supplies, and secretarial staff reasonably required in the performance of the Employee's duties and (ii) a fully furnished and appointed office comparable in size, furnishings and decorations to the offices of other officers of D&B of comparable responsibilities and the facilities of the Company shall be generally available to Employee in the performance of Employee's duties.

(g) Other Benefits. The Company will provide Employee with other employment benefits the Company provides to its full-time executive employees.

(h) Expenses. The Company shall reimburse the Employee for all reasonable business expenses incurred by the Employee in connection with the performance of the Employee's duties under this Agreement, including, but not limited to, reasonable travel, meals, and hotel accommodations of Employee, in each case subject to the Company's then current policies and procedures. Reimbursement shall be made upon submission by Employee of vouchers or an itemized list thereof in accordance with the Company's then current policies and procedures. Employee hereby authorizes the Company in advance to deduct any expenses from the Employee's salary if Employee fails to submit an expense as provided by the Company's then current policies and procedures.

(i) Country Club Membership. The Employee shall be entitled to an allowance for country club membership to be applied toward dues for business use of such club in an amount equal to \$3,120 per year, payable in accordance with the Company's standard payroll procedures.

(j) Changes in Benefits. Any changes to base salary, annual bonus, automobile allowance or other benefits paid to Employee during the term of this Agreement shall be memorialized by a written amendment to this Agreement executed by the Company and Employee.

(k) Options. At the Effective Date, the Employee shall receive Options as part of a pool of Options pursuant to the Incentive Plan, which Incentive Plan is equal to approximately 10% of the equity of Holdings for senior management and directors; provided that, the Option Grant Agreement to be entered into by the Employee and the Incentive Plan shall supersede in all respects the provisions of this Paragraph 2(k) and that the provisions of this Paragraph 2(k) and the provisions of the Option Grant Agreement and the Incentive Plan shall be at the sole and absolute discretion of the Board of Directors of Holdings.

(i) Subject to the terms and conditions of the Option Grant Agreement and the Incentive Plan, Holdings hereby agrees to grant at the Effective Date to the Employee an award of Options divided into "Time Vesting Options," "EBITDA Vesting Options," and "IRR Vesting Options" as follows and as set forth in greater detail in the Option Grant Agreement and the Incentive Plan:

(1) 1/3 Time Vesting Options, which shall vest ratably on the first (1st) through the fifth (5th) anniversary of the Effective Date, subject to certain conditions as set forth in the Option Grant Agreement and the Incentive Plan.

(2) 1/3 EBITDA Vesting Options, which shall vest over a five (5) year period from fiscal year 2010 through 2014, subject to D&B meeting annual EBITDA Targets (as set forth on Annex A hereto) for those fiscal years and certain conditions as set forth in the Option Grant Agreement and the Incentive Plan;

a. If, in any fiscal year such EBITDA Target is not achieved, the Options that would vest in that year will still vest if the EBITDA in the succeeding year aggregated with the EBITDA in such fiscal year would exceed the sum of the EBITDA Target for both fiscal years, subject to certain conditions as set forth in the Option Grant Agreement and the Incentive Plan.

b. Upon a Change of Control (as defined in the Option Grant Agreement and Incentive Plan), any the portion of unvested EBITDA Vesting Options for which the applicable fiscal year passed shall vest if the Oak Hill IRR (as defined in the Option Grant Agreement and Incentive Plan) is greater than or equal to 25%, subject to certain conditions as set forth in the Option Grant Agreement and the Incentive Plan.

(3) 1/3 IRR Vesting Options, which shall be divided equally into two (2) tranches. Upon a Change of Control, (i) Tranche 1 IRR Vesting Options shall vest if the Oak Hill IRR is greater than or equal to 20% and (ii) Tranche 2 IRR Vesting Options shall vest if the Oak Hill IRR is greater than or equal to 25%, in each case, subject to certain conditions as set forth in the Option Grant Agreement and the Incentive Plan.

6. Training. The Company has provided and will continue to provide Employee with such specialized training as the Company, in its sole discretion, deems necessary or beneficial to the performance of Employee's job duties.

7. Confidential Information and Restrictive Covenants. In consideration of the premises and mutual promises contained herein, and for other good and valuable consideration specified herein (including, without limitation substantial amounts of compensation (including, without limitation, as obtained through the Equity Arrangements), the Company Group (as defined below) shall provide the Employee with benefits and Confidential Information, the use or disclosure of which would cause the Company Group substantial loss or injury including substantial diminishment of their goodwill, and would place the Company Group at a material competitive disadvantage. Accordingly, the Company and the Employee hereby agree as follows:

(a) Certain Definitions.

(i) As used in this Agreement, “Affiliate” of any person means any person, directly or indirectly controlling, controlled by or under common control with such person, and includes any person who is an officer, director or employee of such person and any person that would be deemed to be an “affiliate” or an “associate” of such person, as those terms are defined in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. As used in this Agreement. As used in these definitions, “controlling” (including, with its correlative meanings, “controlled by” and “under common control with”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities, partnership or other ownership interests, by contract or otherwise). With respect to any natural person, “Affiliates” shall also include, without limitation, such person’s spouse, child and any trust the beneficiaries or grantor of which are limited solely to such person and/or his or her spouse or child. As used in this Agreement, “person” means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization or other entity.

(ii) As used in this Agreement, “Company Group” shall mean Holdings, the Company, and any subsidiary, and any successor to any of the foregoing.

(iii) As used in this Agreement, “Competitive Business” shall mean any business which is a casual dining restaurant (including, without limitation, restaurants that combine dining and entertainment activities) in the Restricted Territory.

(iv) As used in this Agreement, “Restricted Territory” shall mean Alabama, Arizona, California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, Wisconsin, Ontario, Canada, and any other state or province in which the Company operates through the time of the Employee’s resignation or termination.

(b) Nondisclosure of Confidential Information. During the term of this Agreement, the Company Group agrees to continue to provide, and the Employee will acquire, certain Confidential Information. As a material incentive for the Company Group to enter into this Agreement, as well as in exchange for the consideration specified herein (including, without limitation substantial amounts of compensation (including, without limitation, as obtained through the Equity Arrangements), benefits and access to the Confidential Information, in each case, as set forth herein), and employment of the Employee under this Agreement, the Employee shall maintain in strict confidence and shall not disclose to third parties or use in any task, work or business (except on behalf of the Company Group) any proprietary or confidential information regarding the Company Group and/or [his/her] work with the Company Group, including, without limitation, trade secrets, current and future business plans, customers, customer lists, customer information, vendors, vendor lists, vendor information, employees, employee information, sales, purchasing, pricing determinations, price points, internal and external cost structures, operations, marketing, financial and other business strategies, positioning of stores, information and plans, products and services, games and amusement, development of games and amusement, food and beverage, financial performance and other financial data and compilations of data, new store development and locations, pipeline, information regarding the Company Group's processes, computer programs and/or records, software programs, intellectual property, business development opportunities, acquisitions, acquisition targets, confidential information developed by consultants and contractors, manuals, memoranda, projections, and minutes ("Confidential Information"), without the express written permission of the Board of Directors of Holdings. The Employee's confidentiality obligation in this Paragraph 7 shall include, but not be limited to, any Confidential Information to which the Employee has access to, had access to, will have access to, receives, or received in connection with [his/her] employment by Company Group, and any information designated as confidential by the Company Group. Notwithstanding the foregoing, the term Confidential Information shall not include information that (i) is publicly disclosed through no fault of the Employee, either before or after it becomes known to the Employee, (ii) was known to the Employee prior to the date of this Agreement, which knowledge was acquired independently and not from the Company Group or its directors or employees or (iii) became available to the Employee on a non-confidential basis from a source other than the Company Group, provided such source is not bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Company Group or any other party with respect to such information. The Company Group and the Employee acknowledge and agree that the Confidential Information is continually evolving and changing and that some new Confidential Information will be needed by the Employee and provided by the Company Group for the first time in the course of the term of this Agreement. The Employee expressly acknowledges the trade secret status of the Confidential Information and agrees that the Employee's access to such Confidential Information constitutes a protectable business interest of the Company Group. Notwithstanding the foregoing restrictions, the Employee may disclose any Confidential Information (a) to the Employee's legal advisors subject to such advisor's agreement to maintain the information as confidential, (b) to the extent required for the Employee's enforcement of [his/her] rights hereunder (provided that such information be submitted under seal or otherwise not publicly disclosed) and (c) to the extent required by an order of any court or other governmental authority, but in each case only after the Company Group has been so notified in writing and has had five (5) business days to obtain reasonable protection for such information in connection with such disclosure.

(c) Return of Property. Upon termination of the Employee's employment with the Company Group (for any reason), the Employee shall promptly return to the Company Group all Company property, Confidential Information and all copies thereof obtained by the Employee, or [his/her] employees or agents. The Parties acknowledge that the Company Group would not retain the Employee's services or provide [him/her] with access to its Confidential Information without the covenants and promises contained in this Paragraph 7. For avoidance of doubt, the Employee shall deliver promptly to the Company Group on termination of [his/her] employment with the Company Group for any reason, or at any other time the Company Group may so request, all Confidential Information and all other documentation containing information relating to the business of the Company Group or property of the Company Group which [he/she] obtained or developed while employed by, or otherwise serving or acting on behalf of, the Company Group and which [he/she] may then possess or have under [his/her] control or relating to the "Work" (as defined below).

(d) Non-Access. Employee agrees that following the termination of [his/her] employment with D&B Management, [he/she] will not access the Company Group's computer systems, download files or any information from the Company Group's computer systems or in any way interfere, disrupt, modify or change any computer program used by the Company Group or any data stored on the Company Group's computer systems. Employee further agrees that all of the computers, hand held devices, and mobile telephones provided by the Company are the sole property of the Company Group.

(e) Acknowledgment of the Company Group's Right In Work Product. During the term of this Agreement, the Employee will create, develop and contribute for consideration certain ideas, plans, calculations, technical specifications, works of authorship, inventions, information, data, formulas, models, reports, processes, photographs, marks, designs, computer code, concepts and/or other proprietary materials to the Company Group related to the operation or promotion of the business of the Company Group (collectively, the "Work"). All of the Work is, was and shall hereafter be, a commissioned "work for hire" owned by the Company Group within the meaning of Title 17, Section 101 of the United States Code, as amended. If any portion of the Work is determined not to be a "work for hire" or such doctrine is not effective, the Employee hereby irrevocably assigns, conveys and otherwise transfers to the Company Group, and its respective successors, licensees, and assigns, all right, title and interest worldwide in and to such portion of the Work and all proprietary rights therein, including, without limitation, all copyrights, trademarks, design patents, trade secret rights, moral rights, and all contract and licensing rights, and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known. In accordance with this assignment, the Company Group shall hold all ownership to all rights, without limitation, in and to all of the Work for its own use and for its legal representatives, assigns and successors, and this assignment shall be binding on and extended to the heirs, assigns, representatives and successors of the Employee. In the event the Employee has any right or interest in the Work which cannot be assigned, the Employee agrees to waive enforcement worldwide of any and all such rights or interests against the Company Group and its respective successors, licensees and assigns, and the Employee hereby exclusively and irrevocably licenses any and all such rights and interests, worldwide, to the Company Group in perpetuity and royalty-free, along with the unfettered right to sublicense. All such rights are fully assignable by Company Group. The Employee hereby agrees that all Work is created or developed for the sole use of the Company Group, and that the Employee has no right to market in any manner whatsoever any such Work.

(f) Non-Compete Agreement. The Parties agree that, during the course of the Employee's employment by the Company Group and during the term of this Agreement, the Employee will have access to, and the benefit of, the Company Group's Confidential Information, including but not limited to, the Confidential Information described in Paragraph 7(b). The Parties agree that, during the Employee's employment, the Employee will represent the Company Group and develop contacts and relationships with other persons and entities on behalf of the Company Group, including but not limited to, with customers and potential customers. To protect the Company Group's interest in its Confidential Information, contacts and relationships, to enforce the Employee's obligations under this Paragraph 7, and as a material inducement for the Company Group to enter into this Agreement, as well as in exchange for the consideration specified herein (including, without limitation, substantial amounts of compensation (including, without limitation, as obtained through the Equity Arrangements), benefits and access to and provision of the Confidential Information, in each case, as set forth herein), and employment of the Employee under this Agreement, the Parties hereby agree and covenant that during the term of this Agreement and for a period of one (1) year from the termination of this Agreement for any reason (including, without limitation, resignation by the Employee or upon notice from the Employee as provided in Paragraph 8(b)) (the "Non-Compete Period"), other than (x) due to termination of the Employee's employment by the Employee for "good reason" or by the Company without "cause," each as defined herein or (y) if the Company elects not to provide the payments and other severance benefits set forth in Paragraph 8(e) as set forth in Paragraph 8(f), the Employee shall not directly or indirectly, for [himself/herself] or others, within the Restricted Territory:

(i) own, manage, operate, join, control, or participate in the ownership, management, operation or control of, or engage in any activity, work, business, or investment with any other Competitive Business (or for or on behalf of any other entity or person or any other Competitive Business), including, without limitation, any attempted or actual activity as an employee, officer, director, advisor, agent, equityholder, consultant or independent contractor (whether or not compensated for any of the foregoing); provided, however, that the Employee may own an investment interest of less than 2% in a publicly-traded company.

(g) Non-Solicitation and Non-Hire Agreement. Additionally, in exchange for the consideration specified herein and as stated in this Paragraph 7, and as a material incentive for the Company Group to enter into this Agreement, during the term of this Agreement and for a period of two (2) years from the termination of this Agreement for any reason (including, without limitation, resignation by the Employee) (the “Non-Solicitation and Non-Hire Period”), the Employee shall not, directly or indirectly, on [his/her] own behalf or on behalf of any other person, partnership, entity, association, or corporation, induce or attempt to influence, induce, encourage, any employee of the Company Group at or above the managerial level (including, without limitation, store managers and regional managers), supplier, vendor, licensee, distributor, contractor or other business relation of the Company Group to cease doing business with, adversely alter or interfere with its business relationship with, the Company Group. Further, during the Non-Solicitation and Non-Hire Period, the Employee shall not, on [his/her] own behalf or on behalf of any other person, partnership, entity, association, or corporation, solicit or seek to hire any employee of the Company Group at or above the managerial level (including, without limitation, store managers and regional managers) or in any other manner attempt directly or indirectly to influence, induce, or encourage any employee of the Company Group at or above the managerial level (including, without limitation, store managers and regional managers) to leave their employ (provided, however, that nothing herein shall restrict the Employee from engaging in any general solicitation that is not specifically targeted at such persons), nor shall [he/she] use or disclose to any person, partnership, entity, association, or corporation any information concerning the names, addresses or personal telephone numbers of any employees of the Company Group.

(h) Reasonableness of Restrictions, Modification. It is the desire and intent of the Parties to this Agreement that the provisions of this Paragraph 7 shall be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. It is expressly understood and agreed that the Company Group and the Employee consider the restrictions contained in this Paragraph 7 to be reasonable and necessary for the purposes of preserving and protecting the Confidential Information and other legitimate business interests of the Company Group. Nevertheless, if any of the aforesaid restrictions is found to be unreasonable, over-broad as to geographic area, duration or scope of activity, or otherwise unenforceable, the Company Group and the Employee intend for the restrictions herein set forth to be modified to be reasonable and enforceable and, as so modified, to be fully enforced.

(i) Specific Performance, Injunctive and Other Relief. The Parties acknowledge that money damages would not be a sufficient remedy for any breach or threatened breach of this Paragraph 7 by the Employee. Therefore, notwithstanding the arbitration provisions in Paragraph 10, the Employee and the Company Group agree that the Company Group may resort to a court to enforce this Paragraph 7 by injunctive relief. The Parties agree that the Company Group may enforce this promise without posting a bond and without giving notice to the maximum extent permitted by law. The remedies addressed in this Paragraph 7(i) shall not be deemed the exclusive remedies for a breach and/or threatened breach of this Paragraph 7, but shall be in addition to all remedies available at law or in equity to the Company Group, including, without limitation, the recovery of damages from the Employee. The Employee agrees that the Non-Compete Period and the Non-Solicitation Period shall be tolled during any period of violation by Employee of this Paragraph 7.

(j) Notice and Opportunity to Cure. In the event that the Company asserts that Employee is not in compliance with any of its obligations under this Paragraph 7, unless such non-compliance or breach is willful and intentional, the Company shall provide the Employee with written notice of such assertion and a ten (10) business day opportunity to cure such noncompliance prior to its withholding payment of any consideration specified in this Agreement or taking other legal action.

8. Termination of Agreement.

(a) Death or Disability. This Agreement shall automatically terminate upon the death of Employee or upon Employee's becoming disabled to the extent that [he/she] is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, or is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering employees of D&B Management. The determination of Employee's disability shall be made in good faith by a physician reasonably acceptable to the Company.

(b) Upon Notice. Either the Company or the Employee may terminate this Agreement at any time during the term by giving the other Party no less than thirty (30) days' prior written notice of the date of termination. Promptly after the Employee or the Company gives such notice, the Parties shall meet and in good faith confer regarding the Employee's work responsibilities during the remainder of the notice period; provided that the Company may determine in its sole discretion to not have the Employee continue [his/her] work responsibilities and the Employee shall promptly cease [his/her] work responsibility and vacate [his/her] office. During the remainder of the notice period (if so requested by the Company), Employee agrees to use best efforts to continue performing the duties assigned by the Company, and the Company agrees to continue compensating Employee until the termination date with the same pay and benefits as before the notice was given.

(c) For Cause. The Company may terminate this Agreement without any prior written notice to Employee if the termination is “for cause.” For purposes of this Agreement “for cause” shall be defined as the willful and continued failure by Employee to perform the duties assigned by the Company, failure to follow reasonable business-related directions from the Company, gross insubordination, theft from the Company or its Affiliates, habitual absenteeism or tardiness, conviction or plea of a felony, or any other reckless or willful misconduct that is contrary to the best interests of the Company or materially and adversely affects the reputation of the Company. If the Company believes that an event constituting “for cause” under this section has occurred and such event (i) is not a criminal offense and (ii) is readily curable by Employee, then the Company shall provide written notice to the Employee setting forth: (A) the Company’s intent to terminate the Employee’s employment for cause, and (B) the reasons for the Company’s intent to terminate the Employee’s employment for cause. The Employee shall have ten (10) business days following the receipt of such notice to cure the alleged breach. The Company may terminate this Agreement without any further notice to Employee if such cure has not occurred within such ten (10) business day period. In the event that the Company contends that the event is not readily curable by Employee, the Company shall provide written notice to Employee setting forth: (X) the reasons for the Company’s intent to terminate Employee’s employment “for cause” and (Y) the basis for the Company’s determination that such event is not readily curable.

(d) For Good Reason. The Employee may terminate this Agreement without any prior written notice to the Company if the termination is “for good reason.” For purposes of this Agreement “for good reason” shall be defined as (i) the material breach by the Company of this Agreement and the failure of the Company to remedy such breach within ten (10) days following the delivery of written notice of such breach by the Employee to the Company; (ii) the Company’s relocation of the office where Employee performs [his/her] duties by twenty-five (25) or more miles; (iii) assignment to the Employee of any duties, authority or responsibilities that are materially inconsistent with the Employee’s position, authority, duties or responsibilities, or any other Company action that results in the material diminution in such position, authorities, duties or responsibilities; (iv) substantial change in organizational reporting relationships as compared to the Effective Date that will materially impact Employee’s title, status, position, authority, duties or responsibilities reporting requirements; and (v) any other purported termination of the Employee other than under the terms of this Agreement.

(e) Severance Pay and Release. In the event that the Employee's employment with the Company under this Agreement is terminated for reasons other than (x) upon notice from the Employee as provided in Paragraph 8(b), subject to Paragraph 8(f) or (y) "for cause" as defined in Paragraph 8(c), the Company shall, conditioned upon the Employee's compliance with this Agreement and upon the Employee's execution of a fully effective and non-revocable general release in favor of the Company, its Board of Directors, Affiliates, and employees, in such form as reasonably approved by the Company and the Employee (the "Release") within sixty (60) days of the Employee's termination of employment, which Release shall be provided to the Employee within five (5) days of the Employee's termination of employment, pay to the Employee: (i) twelve (12) months of severance pay at the Employee's then current base salary (adjusted, if applicable, as described below to take into account the amount of disability insurance payments received by the Employee), in accordance with the Company's normal payroll schedule and procedures and commencing on the first payroll date of the Company following the sixtieth (60th) day of the Employee's termination of employment (the "First Payroll Date"), and subject to all applicable withholding (it being agreed that the sum of the after-tax value of these monthly payments and any income replacement benefits received from Company-provided disability insurance as described in Paragraph 8(a) shall not exceed the after-tax value of the Employee's then-current base salary). The portion of the severance pay that would have been paid to the Employee during the period between the Employee's termination of employment and the First Payroll Date had no sixty-day delay been required shall be paid to the Employee on the First Payroll Date and thereafter the remaining portion of the severance pay shall be paid without delay as provided in clause (i) above of this Paragraph 8(e); (ii) an amount equal to the annual bonus, if any, earned by the Employee for the prior fiscal year, if it has not previously been paid by the Company payable in a single lump sum payment at the time provided for under the bonus plan (but without regard to any requirement that the Employee be employed on the bonus payment date) or if later, on the First Payroll Date; (iii) the pro rata portion of the annual bonus, if any, earned by the Employee for the then-current fiscal year, payable in the calendar year in which the then-current fiscal year ends, but in no event later than one hundred twenty (120) days after the end of such fiscal year and no earlier than the First Payroll Date, in accordance with the Company's standard procedures for paying any such bonus to other employees under the bonus plan, except for any requirement that the Employee be employed on the bonus payment date, and subject to all applicable withholding; (iv) monthly payments for a period of twelve (12) months following the Employee's termination that are equal to the monthly payment being made to the Employee under Paragraph 5(c) at the time of the Employee's termination commencing on the First Payroll Date; and (v) monthly payments for a period of six (6) months following the Employee's termination, payable in accordance with the Company's normal payroll schedule and procedures and commencing on the First Payroll Date, and subject to all applicable withholding, that are equal to the monthly premium required by the Employee to maintain [his/her] health insurance benefits provided by the Company's group health insurance plan, in accordance with the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"). In addition, unless the Employee's employment with the Company is terminated (A) "for cause" as defined in Paragraph 8(c) or (B) upon notice from the Employee as provided in Paragraph 8(b), the Employee shall be entitled to retain any stock options previously granted by Holdings to the Employee that are either (x) vested as of the date of the Employee's termination or (y) vest within 180 days after the date of the Employee's termination by virtue of a Change of Control (as defined in the Option Grant Agreement and Incentive Plan), in each case in accordance with the terms of the Incentive Plan and Option Grant Agreement; provided that, in the event the Employee's employment with the Company is terminated without "good reason" as defined in Paragraph 8(d), any vested stock option previously granted by Holdings to the Employee shall terminate thirty-one (31) days following the date of the Employee's termination in accordance with the terms of the Incentive Plan and Option Grant Agreement. In the event that this Agreement is terminated "for cause" pursuant to Paragraph 8(c), the Company shall pay to the Employee only (A) that base salary which has been earned by the Employee through the date of termination payable in accordance with the Company's normal payroll practices and (B) unless the "for cause" termination results from the Employee's theft from the Company or its Affiliates, conviction or plea of a felony, or any other reckless or willful misconduct that materially and adversely affects the reputation of the Company, the annual bonus, if any, described in clause (ii) above of this Paragraph 8(e) and payable in accordance with clause (ii) above of this Paragraph 8(e), if it has not previously been paid by the Company. In the event that this Agreement is terminated upon notice from the Employee pursuant to Paragraph 8(b), the Company shall pay to the Employee only (1) that base salary which has been earned by the Employee through the date of termination payable in accordance with the Company's normal payroll practices and (2) the annual bonus, if any, described in Paragraph 8(e)(ii) above and payable in accordance with Paragraph 8(e)(ii). Notwithstanding any provision to the contrary in this Agreement, no amount shall be paid pursuant to this Paragraph 8(e) unless the Employee's termination of employment constitutes of "separation from service" (as such term is defined in Treas. Reg. Section 1.409-1(h), including the default presumptions). The Employee agrees to return to the Company any payments received pursuant to this Paragraph 8 in the event that Employee does not fully comply (after written notice and opportunity to cure as provided in Paragraph 7(j) above) with all post-employment obligations set out in this Agreement, including, but not limited to, the restrictive covenants and the restrictions on disclosure of the Confidential Information of the Company Group set forth in Paragraph 7.

(f) Severance Pay and Release Upon Termination by the Employee Upon Notice. Notwithstanding anything to the contrary contained herein, if the Employee's employment with the Company is terminated upon notice from the Employee as provided in Paragraph 8(b) (including, without limitation, resignation by the Employee), the Company may at its sole option elect to: (i) provide any payments and other severance benefits set forth in Paragraph 8(e) to the Employee; provided that if the Employee is at any time not in full compliance with the Employee's obligations set forth in Paragraph 7, the Employee shall forfeit any and all payments and other severance benefits set forth in Paragraph 8(e); or (ii) not provide any payments and other severance benefits set forth in Paragraph 8(e) to the Employee, in which case the Employee shall not be bound by the obligations set forth in Paragraph 7(f) (and, for the avoidance of doubt, the Employee shall continue to be bound by all of the other terms of Paragraph 7).

9. Section 409A.

(a) If any payment, compensation or other benefit provided to the Employee in connection with [his/her] employment termination is determined, in whole or in part, to constitute "nonqualified deferred compensation" within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A") and the Employee is a specified employee as defined in Section 409A(a)(2)(B)(i), then no portion of such "nonqualified deferred compensation" shall be paid before the earlier of (i) the day that is six (6) months plus one (1) day after the date of termination or (ii) five (5) days following the Employee's death (the "New Payment Date"). The aggregate of any payments that otherwise would have been paid to the Employee during the period between the date of termination and the New Payment Date shall be paid to the Employee in a lump sum on such New Payment Date. Thereafter, any payments that remain outstanding as of the day immediately following the New Payment Date shall be paid without delay over the time period originally scheduled, in accordance with the terms of this Agreement. Notwithstanding the foregoing, to the extent that the foregoing applies to the provision of any ongoing welfare benefits to the Employee that would not be required to be delayed if the premiums therefor were paid by the Employee, the Employee shall pay the full cost of premiums for such welfare benefits during the six-month period and the Company shall pay the Employee an amount equal to the amount of such premiums paid by the Employee during such six-month period promptly after its conclusion.

(b) The Parties hereto acknowledge and agree that the interpretation of Section 409A and its application to the terms of this Agreement is uncertain and may be subject to change as additional guidance and interpretations become available. Anything to the contrary herein notwithstanding, all benefits or payments provided by the Company to the Employee that would be deemed to constitute “nonqualified deferred compensation” within the meaning of Section 409A are intended to comply with Section 409A. If, however, any such benefit or payment is deemed to not comply with Section 409A, the Company and the Employee agree to renegotiate in good faith any such benefit or payment (including, without limitation, as to the timing of any severance payments payable hereof) so that either (i) Section 409A will not apply or (ii) compliance with Section 409A will be achieved. Notwithstanding the foregoing, the Company makes no guarantee of any federal, state or local tax consequences with respect to the interpretation of Section 409A and its application to the terms of this Agreement, and the Company shall have no liability for any adverse tax consequences of the Employee, as a result of any violation of Section 409A.

(c) Notwithstanding anything to the contrary contained in this Agreement, all reimbursements for costs and expenses under this Agreement shall be paid in no event later than the end of the taxable year following the taxable year in which the Employee incurs such expense. With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit and (ii) the amount of expenses eligible for reimbursements or in-kind benefits provided during any taxable year shall not affect the expenses eligible for reimbursement or in-kind benefits to be provided in any other taxable year, provided, however, that the foregoing clause (ii) shall not be violated with regard to expenses reimbursed under any arrangement covered by Section 105(b) of the Internal Revenue Code of 1986, as amended, solely because such expenses are subject to a limit related to the period the arrangement is in effect.

(d) If under this Agreement, an amount is paid in two or more installments, for purposes of Section 409A, each installment shall be treated as a separate payment.

(e) A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits subject to Section 409A upon or following a termination of employment unless such termination is also a "separation from service" as defined in Treas. Reg. Section 1.409A-1(h), including the default presumptions, and for purposes of any such provision of this Agreement, references to a "resignation," "termination," "terminate," "termination of employment" or like terms shall mean separation from service.

10. Confidential Arbitration. The Employee and the Company hereby agree that any controversy or claim arising out of or relating to this Agreement, including the arbitrability of any controversy or claim, which cannot be settled by mutual agreement will be finally settled by confidential and binding arbitration in accordance with the Federal Arbitration Act. Further, notwithstanding the preceding sentence, in the event disputes arise that relate in any way to and concern this Agreement and also relate in any way to and concern one or more other Equity Agreements, the Parties agree that such disputes may be joined in a single binding arbitration if doing so would not result in unreasonable delay. All arbitrations shall be administered by a panel of three neutral arbitrators (the "Panel") admitted to practice law in Texas for at least ten (10) years, in accordance with the American Arbitration Association Rules. Any such arbitration proceeding shall be administered by the American Arbitration Association and all hearings shall take place in Dallas County, Texas. The arbitration proceeding and all related documents will be confidential, unless disclosure is required by law. The Panel will have the authority to award the same remedies, damages, and costs that a court could award, including but not limited to the right to award injunctive relief in accordance with the other provisions of this Agreement. Further, the Parties specifically agree that, in the interest of minimizing expenses and promoting early resolution of claims, the filing of dispositive motions shall be permitted and that prompt resolution of such motions by the Panel shall be encouraged. The Panel shall issue a written reasoned award explaining the decision, the reasons for the decision, and any damages awarded. The Panel's decision will be final and binding. The judgment on the award rendered by the Panel may be entered in any court having jurisdiction thereof. This provision can be enforced under the Federal Arbitration Act. The Panel shall be permitted to award only those remedies in law or equity that are requested by the Parties, appropriate for the claims and supported by evidence, and each Party shall be required to bear its or [his/her] own arbitration costs, attorneys' fees and expenses.

(a) The decision of the arbitrator on the points in dispute will be final, unappealable and binding, and judgment on the award may be entered in any court having jurisdiction thereof. The Parties agree that this provision has been adopted by the Parties to rapidly and inexpensively resolve any disputes between them and that this provision will be grounds for dismissal of any court action commenced by any Party with respect to this Agreement, other than post-arbitration actions seeking to enforce an arbitration award.

(b) The Parties will keep confidential, and will not disclose to any person, except as may be required by law, the existence of any controversy under this Paragraph 10, the referral of any such controversy to arbitration or the status or resolution thereof. In addition, the confidentiality restrictions set forth in this Agreement shall continue in full force and effect.

(c) As the sole exception to the exclusive and binding nature of the arbitration commitment set forth above, the Parties agree that the Company Group may resort to Texas state courts having equity jurisdiction in and for Dallas County, Texas and the United States District Court for the Northern District of Texas, Dallas Division, at its sole option, to request temporary, preliminary, and/or permanent injunctive or other equitable relief, including, without limitation, specific performance, to enforce the post-employment restrictions and other non-solicitation and confidentiality obligations set forth in this Agreement, without the necessity of proving inadequacy of legal remedies or irreparable harm or posting bond or giving notice, to the maximum extent permitted by law. However, nothing in this Paragraph 10 should be construed to constitute a waiver of the Parties' rights and obligations to arbitrate as set forth in this Paragraph 10.

(d) IN THE EVENT THAT ANY COURT OF COMPETENT JURISDICTION OR ARBITRATOR DETERMINES THAT THE SCOPE OF THE ARBITRATION OR RELATED PROVISIONS OF THIS AGREEMENT ARE TOO BROAD TO BE ENFORCED AS WRITTEN, THE PARTIES INTEND THAT THE COURT REFORM THE PROVISION IN QUESTION TO SUCH NARROWER SCOPE AS IT DETERMINES TO BE REASONABLE AND ENFORCEABLE. EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS BEEN INFORMED BY THE OTHER PARTY HERETO THAT THIS PARAGRAPH 10(d) CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH IT OR [HE/SHE] IS RELYING AND WILL RELY IN ENTERING INTO THIS AGREEMENT.

BEFORE ACCEPTING THE TERMS OF THIS AGREEMENT, INCLUDING THE
RESTRICTIVE COVENANT TERMS, PLEASE READ AND
UNDERSTAND YOUR CONTINUING OBLIGATIONS TO THE COMPANY AND
ITS AFFILIATES.

11. Indemnification. The Company shall indemnify Employee to the fullest extent permitted by Section 145 of the Delaware General Corporation Law against all costs, expenses, liabilities and losses, including but not limited to, attorneys fees, judgments, fines, penalties, taxes and amounts paid in settlement, reasonably incurred by Employee in conjunction with any action, suit, or proceeding, whether civil, criminal, administrative, or investigative in nature, which the Employee is made or threatened to be made a party or witness by reason of [his/her] position as officer, employee or agent of the Company or otherwise due to [his/her] association with the Company or due to [his/her] position or association with any other entity, at the request of the Company. The Company shall advance to Employee all reasonable costs and expenses incurred in connection with such action within twenty (20) days after receipt by the Company of Employee's written request. The Company shall be entitled to be reimbursed by Employee and Employee agrees to reimburse the Company if it is determined that Employee is not entitled to be indemnified with respect to an action, suit, or proceeding under applicable law. The Company shall not settle any such claim in any manner which would impose liability, including monetary penalties or censure, on the Employee without [his/her] prior written consent, unless the Employee would be harmed by such action.

12. Governing Law; Submission to Jurisdiction; Jury Waiver. THIS AGREEMENT SHALL BE EXCLUSIVELY GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICTS OF LAW DOCTRINE. THE VENUE FOR ANY ENFORCEMENT OF THE ARBITRATION AWARD SHALL BE EXCLUSIVELY IN THE COURTS IN DALLAS, TEXAS, AND THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION. THE PARTIES WAIVE ANY RIGHT TO A JURY TRIAL.

13. Severability. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, then the Parties will be relieved of all obligations arising under such provision, but only to the extent it is illegal, unenforceable, or void. The Parties intend that this Agreement will be deemed amended by modifying any such illegal, unenforceable, or void provision to the extent necessary to make it legal and enforceable while preserving its intent, or if such is not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives. Notwithstanding the foregoing, if the remainder of this Agreement will not be affected by such declaration or finding and is capable of substantial performance, then each provision not so affected will be enforced to the extent permitted by law.

14. Waiver. No delay or omission by any Party to this Agreement to exercise any right or power under this Agreement will impair such right or power or be construed as a waiver thereof. A waiver by any of the Parties to this Agreement of any of the covenants to be performed by the other or any breach thereof will not be construed to be a waiver of any succeeding breach thereof or of any other covenant contained in this Agreement. All remedies provided for in this Agreement will be cumulative and in addition to and not in lieu of any other remedies available to any Party at law, in equity or otherwise.

15. Notices. Any notices, consents, demands, requests, approvals and other communications to be given under this Agreement by any Party to the other shall be deemed to have been duly given if given in writing and personally delivered or sent by mail (registered or certified) or by a recognized "next-day delivery service" to the address set forth below a Party's signature, with a courtesy copy provided to the Company's General Counsel.

16. Entire Agreement. This Agreement and the Equity Arrangements represents the entire agreement relating to employment between the Company and Employee and supersedes all previous oral and written and all contemporaneous oral negotiations or commitments, writings and other understandings, including the Employment Agreement which, at the Effective Date, shall be deemed to be terminated and of no further force or effect. No prior or subsequent promises, representation, or understandings relative to any terms or conditions of employment are to be considered as part of this Agreement or as binding.

17. Amendment. This Agreement may be amended or modified only (i) in a writing signed by the Parties hereto and (ii) with the prior written consent of Holdings.

18. Guarantee of Payment and Performance. D&B agrees to guarantee in all respects the payment and performance obligations of D&B Management set forth in this Agreement.

19. Withholding. The Company shall be entitled to withhold from any amounts to be paid or benefits provided to the Employee hereunder any federal, state, local, or foreign withholding or other taxes or charges which it is from time to time required to withhold. The Company shall be entitled to rely on an opinion of counsel if any question as to the amount or requirement of any such withholding shall arise.

20. Acknowledgment. By signing below, as a material inducement to the Company entering into this Agreement, Employee unconditionally represents and warrants that: (a) Employee has been advised to consult with an attorney regarding the terms of this Agreement; (b) Employee has consulted with, or has had sufficient opportunity to consult with Employee's own counsel or other advisors regarding the terms of this Agreement; (c) Employee has relied solely on Employee's own judgment and that of Employee's attorneys, advisors, and representatives regarding the consideration for, and the terms of, this Agreement; (d) any and all questions regarding the terms of this Agreement have been asked and answered to Employee's complete satisfaction; (e) Employee has read this Agreement and fully understand its terms and their import; and (f) Employee is entering into this Agreement voluntarily, of Employee's own free will, and without any duress, coercion, fraudulent inducement, or undue influence exerted by or on behalf of any other Party or any other person or entity.

21. Termination. This Agreement shall automatically terminate without further action upon the termination of the Purchase Agreement and the Employee shall not be entitled to any rights hereunder.

22. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement.

[The remainder of this page is intentionally left blank.]

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

COMPANY:

**DAVE & BUSTER'S MANAGEMENT CORPORATION,
INC.**

By: _____
Name:
Title:

Address: 2481 Manana Drive
Dallas, Texas 75220

DAVE & BUSTER'S, INC.

By: _____
Name:
Title:

Address: 2481 Manana Drive
Dallas, Texas 75220

EMPLOYEE:

Address: _____

[SIGNATURE PAGE TO AMENDED AND RESTATED EMPLOYMENT AGREEMENT]

Schedule to Exhibit 10.3: The form of Amended and Restated Employment Agreement was entered into with the following employees with their respective titles, duties and annual base salaries below and effective as of the date listed below:

<u>Name</u>	<u>Title</u>	<u>Effective Date</u>	<u>Duties</u>	<u>Base</u>
Stephen M. King	Chief Executive Officer	June 1, 2010	Responsible for performing those duties that are customarily associated with the position of Chief Executive Officer and other such reasonable duties that are assigned by the company from time-to-time.	\$600,000
Brian A. Jenkins	Senior Vice President and Chief Financial Officer	June 1, 2010	Responsible for performing those duties that are customarily associated with the position of Senior Vice President and Chief Financial Officer and other such reasonable duties that are assigned by the company from time-to-time.	\$325,000
Jay L. Tobin	Senior Vice President, General Counsel and Secretary	June 1, 2010	Responsible for performing those duties that are customarily associated with the position of Senior Vice President, General Counsel and Secretary and other such reasonable duties that are assigned by the company from time-to-time.	\$320,000
John P. Gleason, III	Senior Vice President and Chief Marketing Officer	June 1, 2010	Responsible for performing those duties that are customarily associated with the position of Senior Vice President and Chief Marketing Officer and other such reasonable duties that are assigned by the company from time-to-time.	\$260,000

**FORM OF
EMPLOYMENT AGREEMENT**

This Employment Agreement (this “Agreement”) is entered into on the 14th day of February, 2011 (the “Effective Date”), between Dave & Buster’s Management Corporation, Inc., a Delaware corporation (“D&B Management”), Dave & Buster’s, Inc., a Missouri corporation (“D&B”), and Dolf Berle (the “Employee”). D&B Management and D&B are collectively referred to herein as the “Company.” D&B Management, D&B and the Employee are collectively referred to herein as the “Parties”.

WHEREAS, at the Effective Date, D&B Management shall employ Employee and D&B agrees that Employee shall serve as President and Chief Operating Officer of D&B;

WHEREAS, at the Effective Date, the Employee shall receive options (“Options”) for common stock in Dave & Buster’s Parent, Inc. (“Parent”) as part of a pool of Options pursuant to the Parent’s 2010 Management Incentive Plan (the “Incentive Plan”) and a Stock Option Grant Agreement (the “Option Grant Agreement”) (the Incentive Plan and the Option Grant Agreement are collectively referred to as the “Equity Arrangements”), as a result of his position with the Company and in consideration for, among other things, protection of the Confidential Information (as defined below);

WHEREAS, the Parties acknowledge and agree that the services of the Employee are of a special and unique character, and in the performance of duties for the Company, the Employee has been and will be provided additional Confidential Information, pursuant to and in reliance on the restrictive covenant obligations and the restrictions on disclosure of the Confidential Information set forth in Paragraph 7;

WHEREAS, the Company desires to be assured that the Confidential Information and goodwill of the Company will be preserved for the exclusive benefit of the Company and that, as a material incentive for the Company to enter into this Agreement, as well as in exchange for the consideration specified herein (including, without limitation substantial amounts of compensation (including, without limitation, as obtained through the Equity Arrangements), benefits and access to the Confidential Information, in each case, as set forth herein), and employment of the Employee under this Agreement, the Employee acknowledges and agrees to be bound by the restrictive covenant obligations and the restrictions on disclosure of the Confidential Information set forth in Paragraph 7;

WHEREAS, the Parties acknowledge and agree that the restrictive covenant obligations and the restrictions on disclosure of the Confidential Information set forth in Paragraph 7 are essential to the continued growth and stability of the Company's business, good will, customer base and to the continuing viability of its endeavors, and are a material inducement to the Company entering into this Agreement; and

WHEREAS, the Parties acknowledge and agree that the Company would be irreparably harmed if their Confidential Information were disclosed by the Employee.

NOW, THEREFORE, for and in consideration of the promises herein contained, the provision of Confidential Information and other good and valuable consideration, the sufficiency of which is hereby acknowledged, D&B, D&B Management, and Employee agree as follows:

1. Employment/Duties. D&B Management agrees to employ Employee and D&B agrees that Employee shall serve as President and Chief Operating Officer of D&B. Employee will be responsible for performing those duties that are customarily associated with the position of President and Chief Operating Officer and other such reasonable duties that are assigned by the Company from time-to-time. The Company or its Affiliates (as defined below) will provide appropriate training to Employee to permit him to perform his duties competently.

2. Term of Agreement. This Agreement shall be in effect for two (2) years from the Effective Date of this Agreement unless it is terminated earlier under the terms of Paragraph 8; provided, however, that commencing on the date two (2) years after the Effective Date, and on each annual anniversary of such date (such date and each annual anniversary thereof shall be hereinafter referred to as the "Renewal Date"), the term of this Agreement shall be automatically extended for a one year period unless it is terminated earlier under the terms of Paragraph 8. The Parties agree that unless specifically stated otherwise, the obligations created in Paragraphs 7, 9, 10, 11, 12 and 18 will survive the termination of this Agreement and of Employee's employment with D&B Management.

3. Employee's Responsibilities. Employee agrees that unless specifically stated otherwise, during the term of Employee's employment by D&B Management, Employee will devote Employee's full business time and best efforts and abilities to the performance of his duties for the Company. Employee agrees to act in the best interest of the Company at all times. Employee will act in accordance with the highest professional standards of ethics and integrity. Employee agrees to use Employee's best efforts and skills to preserve the business of the Company and the goodwill of its employees and persons having business relations with the Company. Employee will comply with all applicable laws and all of the Company's and its Affiliates' then current policies and procedures. Notwithstanding anything contained herein to the contrary, if (a) Employee complies with the terms and provisions of D&B's Code of Business Ethics, as the same may be revised from time-to-time and (b) Employee's activities do not interfere with Employee's obligations to the Company, then, during the term of Employee's employment by D&B Management, Employee may (x) engage in charitable, civic, fraternal and professional activities, (y) give lectures on behalf of educational or for-profit institutions, and (z) manage personal investments; provided that Employee shall disclose any conflicts of interest that cause Employee's personal endeavors to be in material conflict with the business of the Company and/or its Affiliates.

4. No Limitations. Employee warrants and represents that there is no contractual, judicial or other restraint that impairs Employee's right or legal ability to enter into this Agreement and to carry out Employee's duties and responsibilities to the Company, Parent and its subsidiaries.

5. Compensation and Benefits.

(a) Base Salary. During the term of this Agreement, D&B Management will pay to Employee a base salary of \$350,000.00 per year. The base salary will be paid bi-weekly on regularly scheduled paydays determined by the Company. Employee shall be given an annual performance evaluation and, as determined by the Board of Directors of D&B Management, may receive an annual salary increase.

(b) Annual Bonus. During the term of this Agreement, the Employee will be eligible to receive an annual bonus as approved on annual basis by the Board of Directors of D&B Management and, if so approved, as determined by the Company based upon the attainment of a combination of individual and Company goals during a fiscal year set forth in a bonus plan approved by the Board of Directors of D&B Management, payable in accordance with such bonus plan. Employee's individual participation percentage in the bonus plan is equal to 50% of such Employee's base salary for the fiscal year.

(c) Automobile. The Employee shall be entitled to an automobile allowance to be applied toward the use of an automobile for business purposes during the term of this Agreement, in an amount equal to \$10,000 per year, payable in accordance with the Company's standard payroll procedures.

(d) Retirement and Welfare Plans. Employee shall be eligible to participate in any profit sharing, qualified and nonqualified retirement plans, and any health, life, accident, disability insurance, sick leave, or other benefit plans or programs made available to similarly situated employees of the Company as of the Effective Date (collectively, the "Plans"), as long as they are kept in force by the Company and provided that Employee meets the eligibility requirements of the respective Plans. Nothing contained herein shall limit the right of the Company, in its sole and absolute discretion, to modify, amend or discontinue any of the Plans.

(e) Vacation. Subject to the Company's generally applicable policies relating to vacations, Employee shall be entitled to paid vacation commensurate with Employee's position and tenure with the Company, but in no event less than four (4) weeks paid vacation during each calendar year.

(f) Office and Support Staff. To the extent reasonably practicable, the Company shall endeavor to supply the Employee (i) with all equipment, supplies, and secretarial staff reasonably required in the performance of the Employee's duties and (ii) a fully furnished and appointed office comparable in size, furnishings and decorations to the offices of other officers of D&B of comparable responsibilities and the facilities of the Company shall be generally available to Employee in the performance of Employee's duties.

(g) Other Benefits. The Company will provide Employee with other employment benefits the Company provides to its full-time executive employees.

(h) Expenses. The Company shall reimburse the Employee for all reasonable business expenses incurred by the Employee in connection with the performance of the Employee's duties under this Agreement, including, but not limited to, reasonable travel, meals, and hotel accommodations of Employee, in each case subject to the Company's then current policies and procedures. Reimbursement shall be made upon submission by Employee of vouchers or an itemized list thereof in accordance with the Company's then current policies and procedures. Employee hereby authorizes the Company in advance to deduct any expenses from the Employee's salary if Employee fails to submit an expense as provided by the Company's then current policies and procedures.

(i) Country Club Membership. The Employee shall be entitled to an allowance for country club membership to be applied toward dues for business use of such club in an amount equal to \$3,120 per year, payable in accordance with the Company's standard payroll procedures.

(j) Changes in Benefits. Any changes to base salary, annual bonus, automobile allowance or other benefits paid to Employee during the term of this Agreement shall be memorialized by a written amendment to this Agreement executed by the Company and Employee.

(k) Options. At the Effective Date, the Employee shall receive Options as part of a pool of Options pursuant to the Incentive Plan, which Incentive Plan is equal to approximately 10% of the equity of Parent for senior management and directors; provided that, the Option Grant Agreement to be entered into by the Employee and the Incentive Plan shall supersede in all respects the provisions of this Paragraph 2(k) and that the provisions of this Paragraph 2(k) and the provisions of the Equity Arrangements shall be at the sole and absolute discretion of the Board of Directors of Parent.

(i) Subject to the terms and conditions of the Equity Arrangements, Parent hereby agrees to grant at the Effective Date to the Employee an award of Options divided into "Time Vesting Options," "EBITDA Vesting Options," and "IRR Vesting Options" as follows and as set forth in greater detail in the Equity Arrangements:

(1) 1/3 Time Vesting Options, which shall vest ratably on the first (1st) through the fifth (5th) anniversary of the Effective Date, subject to certain conditions as set forth in the Equity Arrangements. Upon a Change of Control (as defined in the Equity Arrangements), 100% of the unvested Time Vesting Options shall become vested and exercisable.

(2) 1/3 EBITDA Vesting Options, which shall vest over a four (4) year period from fiscal years 2011 through 2014, subject to D&B meeting annual EBITDA Targets (as set forth on Annex A hereto) for those fiscal years and certain conditions as set forth in the Equity Arrangements;

a. If, in any fiscal year such EBITDA Target is not achieved, the Options that would vest in that year will still vest if the EBITDA in the succeeding year aggregated with the EBITDA in such fiscal year would exceed the sum of the EBITDA Target for both fiscal years, subject to certain conditions as set forth in the Equity Arrangements.

b. Upon a Change of Control (as defined in the Equity Arrangements), any the unvested EBITDA Vesting Options shall vest if the Oak Hill IRR (as defined in the Equity Arrangements) is greater than or equal to 25%, subject to certain conditions as set forth in the Equity Arrangements.

(3) 1/3 IRR Vesting Options, which shall be divided equally into two (2) tranches. Upon a Change of Control, (i) Tranche 1 IRR Vesting Options shall vest if the Oak Hill IRR is greater than or equal to 20% and (ii) Tranche 2 IRR Vesting Options shall vest if the Oak Hill IRR is greater than or equal to 25%, in each case, subject to certain conditions as set forth in the Equity Arrangements.

6. Training. The Company has provided and will continue to provide Employee with such specialized training as the Company, in its sole discretion, deems necessary or beneficial to the performance of Employee's job duties.

7. Confidential Information and Restrictive Covenants. In consideration of the premises and mutual promises contained herein, and for other good and valuable consideration specified herein (including, without limitation substantial amounts of compensation (including, without limitation, as obtained through the Equity Arrangements), the Company Group (as defined below) shall provide the Employee with benefits and Confidential Information, the use or disclosure of which would cause the Company Group substantial loss or injury including substantial diminishment of their goodwill, and would place the Company Group at a material competitive disadvantage. Accordingly, the Company and the Employee hereby agree as follows:

(a) Certain Definitions.

(i) As used in this Agreement, “Affiliate” of any person means any person, directly or indirectly controlling, controlled by or under common control with such person, and includes any person who is an officer, director or employee of such person and any person that would be deemed to be an “affiliate” or an “associate” of such person, as those terms are defined in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. As used in this Agreement. As used in these definitions, “controlling” (including, with its correlative meanings, “controlled by” and “under common control with”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities, partnership or other ownership interests, by contract or otherwise). With respect to any natural person, “Affiliates” shall also include, without limitation, such person’s spouse, child and any trust the beneficiaries or grantor of which are limited solely to such person and/or his or her spouse or child. As used in this Agreement, “person” means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization or other entity.

(ii) As used in this Agreement, “Company Group” shall mean Parent, Dave & Buster’s Holdings, Inc., the Company, and any subsidiary, and any successor to any of the foregoing.

(iii) As used in this Agreement, “Competitive Business” shall mean any business which is a casual dining restaurant (including, without limitation, restaurants that combine dining and entertainment activities) in the Restricted Territory.

(iv) As used in this Agreement, “Restricted Territory” shall mean Alabama, Arizona, California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, Wisconsin, Ontario, Canada, and any other state or province in which the Company operates through the time of the Employee’s resignation or termination.

(b) Nondisclosure of Confidential Information. During the term of this Agreement, the Company Group agrees to continue to provide, and the Employee will acquire, certain Confidential Information. As a material incentive for the Company Group to enter into this Agreement, as well as in exchange for the consideration specified herein (including, without limitation substantial amounts of compensation (including, without limitation, as obtained through the Equity Arrangements), benefits and access to the Confidential Information, in each case, as set forth herein), and employment of the Employee under this Agreement, the Employee shall maintain in strict confidence and shall not disclose to third parties or use in any task, work or business (except on behalf of the Company Group) any proprietary or confidential information regarding the Company Group and/or his work with the Company Group, including, without limitation, trade secrets, current and future business plans, customers, customer lists, customer information, vendors, vendor lists, vendor information, employees, employee information, sales, purchasing, pricing determinations, price points, internal and external cost structures, operations, marketing, financial and other business strategies, positioning of stores, information and plans, products and services, games and amusement, development of games and amusement, food and beverage, financial performance and other financial data and compilations of data, new store development and locations, pipeline, information regarding the Company Group's processes, computer programs and/or records, software programs, intellectual property, business development opportunities, acquisitions, acquisition targets, confidential information developed by consultants and contractors, manuals, memoranda, projections, and minutes ("Confidential Information"), without the express written permission of the Board of Directors of Parent. The Employee's confidentiality obligation in this Paragraph 7 shall include, but not be limited to, any Confidential Information to which the Employee has access to, had access to, will have access to, receives, or received in connection with his employment by Company Group, and any information designated as confidential by the Company Group. Notwithstanding the foregoing, the term Confidential Information shall not include information that (i) is publicly disclosed through no fault of the Employee, either before or after it becomes known to the Employee, (ii) was known to the Employee prior to the date of this Agreement, which knowledge was acquired independently and not from the Company Group or its directors or employees or (iii) became available to the Employee on a non-confidential basis from a source other than the Company Group, provided such source is not bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Company Group or any other party with respect to such information. The Company Group and the Employee acknowledge and agree that the Confidential Information is continually evolving and changing and that some new Confidential Information will be needed by the Employee and provided by the Company Group for the first time in the course of the term of this Agreement. The Employee expressly acknowledges the trade secret status of the Confidential Information and agrees that the Employee's access to such Confidential Information constitutes a protectable business interest of the Company Group. Notwithstanding the foregoing restrictions, the Employee may disclose any Confidential Information (a) to the Employee's legal advisors subject to such advisor's agreement to maintain the information as confidential, (b) to the extent required for the Employee's enforcement of his rights hereunder (provided that such information be submitted under seal or otherwise not publicly disclosed) and (c) to the extent required by an order of any court or other governmental authority, but in each case only after the Company Group has been so notified in writing and has had five (5) business days to obtain reasonable protection for such information in connection with such disclosure.

(c) Return of Property. Upon termination of the Employee's employment with the Company Group (for any reason), the Employee shall promptly return to the Company Group all Company property, Confidential Information and all copies thereof obtained by the Employee, or his employees or agents. The Parties acknowledge that the Company Group would not retain the Employee's services or provide him with access to its Confidential Information without the covenants and promises contained in this Paragraph 7. For avoidance of doubt, the Employee shall deliver promptly to the Company Group on termination of his employment with the Company Group for any reason, or at any other time the Company Group may so request, all Confidential Information and all other documentation containing information relating to the business of the Company Group or property of the Company Group which he obtained or developed while employed by, or otherwise serving or acting on behalf of, the Company Group and which he may then possess or have under his control or relating to the "Work" (as defined below).

(d) Non-Access. Employee agrees that following the termination of his employment with D&B Management, he will not access the Company Group's computer systems, download files or any information from the Company Group's computer systems or in any way interfere, disrupt, modify or change any computer program used by the Company Group or any data stored on the Company Group's computer systems. Employee further agrees that all of the computers, hand held devices, and mobile telephones provided by the Company are the sole property of the Company Group.

(e) Acknowledgment of the Company Group's Right In Work Product. During the term of this Agreement, the Employee will create, develop and contribute for consideration certain ideas, plans, calculations, technical specifications, works of authorship, inventions, information, data, formulas, models, reports, processes, photographs, marks, designs, computer code, concepts and/or other proprietary materials to the Company Group related to the operation or promotion of the business of the Company Group (collectively, the "Work"). All of the Work is, was and shall hereafter be, a commissioned "work for hire" owned by the Company Group within the meaning of Title 17, Section 101 of the United States Code, as amended. If any portion of the Work is determined not to be a "work for hire" or such doctrine is not effective, the Employee hereby irrevocably assigns, conveys and otherwise transfers to the Company Group, and its respective successors, licensees, and assigns, all right, title and interest worldwide in and to such portion of the Work and all proprietary rights therein, including, without limitation, all copyrights, trademarks, design patents, trade secret rights, moral rights, and all contract and licensing rights, and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known. In accordance with this assignment, the Company Group shall hold all ownership to all rights, without limitation, in and to all of the Work for its own use and for its legal representatives, assigns and successors, and this assignment shall be binding on and extended to the heirs, assigns, representatives and successors of the Employee. In the event the Employee has any right or interest in the Work which cannot be assigned, the Employee agrees to waive enforcement worldwide of any and all such rights or interests against the Company Group and its respective successors, licensees and assigns, and the Employee hereby exclusively and irrevocably licenses any and all such rights and interests, worldwide, to the Company Group in perpetuity and royalty-free, along with the unfettered right to sublicense. All such rights are fully assignable by Company Group. The Employee hereby agrees that all Work is created or developed for the sole use of the Company Group, and that the Employee has no right to market in any manner whatsoever any such Work.

(f) Non-Compete Agreement. The Parties agree that, during the course of the Employee's employment by the Company Group and during the term of this Agreement, the Employee will have access to, and the benefit of, the Company Group's Confidential Information, including but not limited to, the Confidential Information described in Paragraph 7(b). The Parties agree that, during the Employee's employment, the Employee will represent the Company Group and develop contacts and relationships with other persons and entities on behalf of the Company Group, including but not limited to, with customers and potential customers. To protect the Company Group's interest in its Confidential Information, contacts and relationships, to enforce the Employee's obligations under this Paragraph 7, and as a material inducement for the Company Group to enter into this Agreement, as well as in exchange for the consideration specified herein (including, without limitation, substantial amounts of compensation (including, without limitation, as obtained through the Equity Arrangements), benefits and access to and provision of the Confidential Information, in each case, as set forth herein), and employment of the Employee under this Agreement, the Parties hereby agree and covenant that during the term of this Agreement and for a period of one (1) year from the termination of this Agreement for any reason (including, without limitation, resignation by the Employee or upon notice from the Employee as provided in Paragraph 8(b)) (the "Non-Compete Period"), other than (x) due to termination of the Employee's employment by the Employee for "good reason" or by the Company without "cause," each as defined herein or (y) if the Company elects not to provide the payments and other severance benefits set forth in Paragraph 8(e) as set forth in Paragraph 8(f), the Employee shall not directly or indirectly, for himself or others, within the Restricted Territory:

(i) own, manage, operate, join, control, or participate in the ownership, management, operation or control of, or engage in any activity, work, business, or investment with any other Competitive Business (or for or on behalf of any other entity or person or any other Competitive Business), including, without limitation, any attempted or actual activity as an employee, officer, director, advisor, agent, equityholder, consultant or independent contractor (whether or not compensated for any of the foregoing); provided, however, that the Employee may own an investment interest of less than 2% in a publicly-traded company.

(g) Non-Solicitation and Non-Hire Agreement. Additionally, in exchange for the consideration specified herein and as stated in this Paragraph 7, and as a material incentive for the Company Group to enter into this Agreement, during the term of this Agreement and for a period of two (2) years from the termination of this Agreement for any reason (including, without limitation, resignation by the Employee) (the “Non-Solicitation and Non-Hire Period”), the Employee shall not, directly or indirectly, on his own behalf or on behalf of any other person, partnership, entity, association, or corporation, induce or attempt to influence, induce, encourage, any employee of the Company Group at or above the managerial level (including, without limitation, store managers and regional managers), supplier, vendor, licensee, distributor, contractor or other business relation of the Company Group to cease doing business with, adversely alter or interfere with its business relationship with, the Company Group. Further, during the Non-Solicitation and Non-Hire Period, the Employee shall not, on his own behalf or on behalf of any other person, partnership, entity, association, or corporation, solicit or seek to hire any employee of the Company Group at or above the managerial level (including, without limitation, store managers and regional managers) or in any other manner attempt directly or indirectly to influence, induce, or encourage any employee of the Company Group at or above the managerial level (including, without limitation, store managers and regional managers) to leave their employ (provided, however, that nothing herein shall restrict the Employee from engaging in any general solicitation that is not specifically targeted at such persons), nor shall he use or disclose to any person, partnership, entity, association, or corporation any information concerning the names, addresses or personal telephone numbers of any employees of the Company Group.

(h) Reasonableness of Restrictions, Modification. It is the desire and intent of the Parties to this Agreement that the provisions of this Paragraph 7 shall be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. It is expressly understood and agreed that the Company Group and the Employee consider the restrictions contained in this Paragraph 7 to be reasonable and necessary for the purposes of preserving and protecting the Confidential Information and other legitimate business interests of the Company Group. Nevertheless, if any of the aforesaid restrictions is found to be unreasonable, over-broad as to geographic area, duration or scope of activity, or otherwise unenforceable, the Company Group and the Employee intend for the restrictions herein set forth to be modified to be reasonable and enforceable and, as so modified, to be fully enforced.

(i) Specific Performance, Injunctive and Other Relief. The Parties acknowledge that money damages would not be a sufficient remedy for any breach or threatened breach of this Paragraph 7 by the Employee. Therefore, notwithstanding the arbitration provisions in Paragraph 10, the Employee and the Company Group agree that the Company Group may resort to a court to enforce this Paragraph 7 by injunctive relief. The Parties agree that the Company Group may enforce this promise without posting a bond and without giving notice to the maximum extent permitted by law. The remedies addressed in this Paragraph 7(i) shall not be deemed the exclusive remedies for a breach and/or threatened breach of this Paragraph 7, but shall be in addition to all remedies available at law or in equity to the Company Group, including, without limitation, the recovery of damages from the Employee. The Employee agrees that the Non-Compete Period and the Non-Solicitation Period shall be tolled during any period of violation by Employee of this Paragraph 7.

(j) Notice and Opportunity to Cure. In the event that the Company asserts that Employee is not in compliance with any of its obligations under this Paragraph 7, unless such non-compliance or breach is willful and intentional, the Company shall provide the Employee with written notice of such assertion and a ten (10) business day opportunity to cure such noncompliance prior to its withholding payment of any consideration specified in this Agreement or taking other legal action.

8. Termination of Agreement.

(a) Death or Disability. This Agreement shall automatically terminate upon the death of Employee or upon Employee's becoming disabled to the extent that he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, or is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering employees of D&B Management. The determination of Employee's disability shall be made in good faith by a physician reasonably acceptable to the Company.

(b) Upon Notice. Either the Company or the Employee may terminate this Agreement at any time during the term by giving the other Party no less than thirty (30) days' prior written notice of the date of termination. Promptly after the Employee or the Company gives such notice, the Parties shall meet and in good faith confer regarding the Employee's work responsibilities during the remainder of the notice period; provided that the Company may determine in its sole discretion to not have the Employee continue his work responsibilities and the Employee shall promptly cease his work responsibility and vacate his office. During the remainder of the notice period (if so requested by the Company), Employee agrees to use best efforts to continue performing the duties assigned by the Company, and the Company agrees to continue compensating Employee until the termination date with the same pay and benefits as before the notice was given.

(c) For Cause. The Company may terminate this Agreement without any prior written notice to Employee if the termination is “for cause.” For purposes of this Agreement “for cause” shall be defined as the willful and continued failure by Employee to perform the duties assigned by the Company, failure to follow reasonable business-related directions from the Company, gross insubordination, theft from the Company or its Affiliates, habitual absenteeism or tardiness, conviction or plea of a felony, or any other reckless or willful misconduct that is contrary to the best interests of the Company or materially and adversely affects the reputation of the Company. If the Company believes that an event constituting “for cause” under this section has occurred and such event (i) is not a criminal offense and (ii) is readily curable by Employee, then the Company shall provide written notice to the Employee setting forth: (A) the Company’s intent to terminate the Employee’s employment for cause, and (B) the reasons for the Company’s intent to terminate the Employee’s employment for cause. The Employee shall have ten (10) business days following the receipt of such notice to cure the alleged breach. The Company may terminate this Agreement without any further notice to Employee if such cure has not occurred within such ten (10) business day period. In the event that the Company contends that the event is not readily curable by Employee, the Company shall provide written notice to Employee setting forth: (X) the reasons for the Company’s intent to terminate Employee’s employment “for cause” and (Y) the basis for the Company’s determination that such event is not readily curable.

(d) For Good Reason. The Employee may terminate this Agreement without any prior written notice to the Company if the termination is “for good reason.” For purposes of this Agreement “for good reason” shall be defined as (i) the material breach by the Company of this Agreement and the failure of the Company to remedy such breach within ten (10) days following the delivery of written notice of such breach by the Employee to the Company; (ii) the Company’s relocation of the office where Employee performs his duties by twenty-five (25) or more miles; (iii) assignment to the Employee of any duties, authority or responsibilities that are materially inconsistent with the Employee’s position, authority, duties or responsibilities, or any other Company action that results in the material diminution in such position, authorities, duties or responsibilities; (iv) substantial change in organizational reporting relationships as compared to the Effective Date that will materially impact Employee’s title, status, position, authority, duties or responsibilities reporting requirements; and (v) any other purported termination of the Employee other than under the terms of this Agreement.

(e) Severance Pay and Release. In the event that the Employee's employment with the Company under this Agreement is terminated for reasons other than (x) upon notice from the Employee as provided in Paragraph 8(b), subject to Paragraph 8(f) or (y) "for cause" as defined in Paragraph 8(c), the Company shall, conditioned upon the Employee's compliance with this Agreement and upon the Employee's execution of a fully effective and non-revocable general release in favor of the Company, its Board of Directors, Affiliates, and employees, in such form as reasonably approved by the Company and the Employee (the "Release") within sixty (60) days of the Employee's termination of employment, which Release shall be provided to the Employee within five (5) days of the Employee's termination of employment, pay to the Employee: (i) twelve (12) months of severance pay at the Employee's then current base salary (adjusted, if applicable, as described below to take into account the amount of disability insurance payments received by the Employee), in accordance with the Company's normal payroll schedule and procedures and commencing on the first payroll date of the Company following the sixtieth (60th) day of the Employee's termination of employment (the "First Payroll Date"), and subject to all applicable withholding (it being agreed that the sum of the after-tax value of these monthly payments and any income replacement benefits received from Company-provided disability insurance as described in Paragraph 8(a) shall not exceed the after-tax value of the Employee's then-current base salary). The portion of the severance pay that would have been paid to the Employee during the period between the Employee's termination of employment and the First Payroll Date had no sixty-day delay been required shall be paid to the Employee on the First Payroll Date and thereafter the remaining portion of the severance pay shall be paid without delay as provided in clause (i) above of this Paragraph 8(e); (ii) an amount equal to the annual bonus, if any, earned by the Employee for the prior fiscal year, if it has not previously been paid by the Company payable in a single lump sum payment at the time provided for under the bonus plan (but without regard to any requirement that the Employee be employed on the bonus payment date) or if later, on the First Payroll Date; (iii) the pro rata portion of the annual bonus, if any, earned by the Employee for the then-current fiscal year, payable in the calendar year in which the then-current fiscal year ends, but in no event later than one hundred twenty (120) days after the end of such fiscal year and no earlier than the First Payroll Date, in accordance with the Company's standard procedures for paying any such bonus to other employees under the bonus plan, except for any requirement that the Employee be employed on the bonus payment date, and subject to all applicable withholding; (iv) monthly payments for a period of twelve (12) months following the Employee's termination that are equal to the monthly payment being made to the Employee under Paragraph 5(c) at the time of the Employee's termination commencing on the First Payroll Date; and (v) monthly payments for a period of six (6) months following the Employee's termination, payable in accordance with the Company's normal payroll schedule and procedures and commencing on the First Payroll Date, and subject to all applicable withholding, that are equal to the monthly premium required by the Employee to maintain his health insurance benefits provided by the Company's group health insurance plan, in accordance with the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"). In addition, unless the Employee's employment with the Company is terminated (A) "for cause" as defined in Paragraph 8(c) or (B) upon notice from the Employee as provided in Paragraph 8(b), the Employee shall be entitled to retain any stock options previously granted by Holdings to the Employee that are either (x) vested as of the date of the Employee's termination or (y) vest within 180 days after the date of the Employee's termination by virtue of a Change of Control (as defined in the Option Grant Agreement and Incentive Plan), in each case in accordance with the terms of the Incentive Plan and Option Grant Agreement; provided that, in the event the Employee's employment with the Company is terminated without "good reason" as defined in Paragraph 8(d), any vested stock option previously granted by Holdings to the Employee shall terminate thirty-one (31) days following the date of the Employee's termination in accordance with the terms of the Incentive Plan and Option Grant Agreement. In the event that this Agreement is terminated "for cause" pursuant to Paragraph 8(c), the Company shall pay to the Employee only (A) that base salary which has been earned by the Employee through the date of termination payable in accordance with the Company's normal payroll practices and (B) unless the "for cause" termination results from the Employee's theft from the Company or its Affiliates, conviction or plea of a felony, or any other reckless or willful misconduct that materially and adversely affects the reputation of the Company, the annual bonus, if any, described in clause (ii) above of this Paragraph 8(e) and payable in accordance with clause (ii) above of this Paragraph 8(e), if it has not previously been paid by the Company. In the event that this Agreement is terminated upon notice from the Employee pursuant to Paragraph 8(b), the Company shall pay to the Employee only (1) that base salary which has been earned by the Employee through the date of termination payable in accordance with the Company's normal payroll practices and (2) the annual bonus, if any, described in Paragraph 8(e)(ii) above and payable in accordance with Paragraph 8(e)(ii). Notwithstanding any provision to the contrary in this Agreement, no amount shall be paid pursuant to this Paragraph 8(e) unless the Employee's termination of employment constitutes of "separation from service" (as such term is defined in Treas. Reg. Section 1.409-1(h), including the default presumptions). The Employee agrees to return to the Company any payments received pursuant to this Paragraph 8 in the event that Employee does not fully comply (after written notice and opportunity to cure as provided in Paragraph 7(j) above) with all post-employment obligations set out in this Agreement, including, but not limited to, the restrictive covenants and the restrictions on disclosure of the Confidential Information of the Company Group set forth in Paragraph 7.

(f) Severance Pay and Release Upon Termination by the Employee Upon Notice. Notwithstanding anything to the contrary contained herein, if the Employee's employment with the Company is terminated upon notice from the Employee as provided in Paragraph 8(b) (including, without limitation, resignation by the Employee), the Company may at its sole option elect to: (i) provide any payments and other severance benefits set forth in Paragraph 8(e) to the Employee; provided that if the Employee is at any time not in full compliance with the Employee's obligations set forth in Paragraph 7, the Employee shall forfeit any and all payments and other severance benefits set forth in Paragraph 8(e); or (ii) not provide any payments and other severance benefits set forth in Paragraph 8(e) to the Employee, in which case the Employee shall not be bound by the obligations set forth in Paragraph 7(f) (and, for the avoidance of doubt, the Employee shall continue to be bound by all of the other terms of Paragraph 7).

9. Section 409A

(a) If any payment, compensation or other benefit provided to the Employee in connection with his employment termination is determined, in whole or in part, to constitute "nonqualified deferred compensation" within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A") and the Employee is a specified employee as defined in Section 409A(a)(2)(B)(i), then no portion of such "nonqualified deferred compensation" shall be paid before the earlier of (i) the day that is six (6) months plus one (1) day after the date of termination or (ii) five (5) days following the Employee's death (the "New Payment Date"). The aggregate of any payments that otherwise would have been paid to the Employee during the period between the date of termination and the New Payment Date shall be paid to the Employee in a lump sum on such New Payment Date. Thereafter, any payments that remain outstanding as of the day immediately following the New Payment Date shall be paid without delay over the time period originally scheduled, in accordance with the terms of this Agreement. Notwithstanding the foregoing, to the extent that the foregoing applies to the provision of any ongoing welfare benefits to the Employee that would not be required to be delayed if the premiums therefor were paid by the Employee, the Employee shall pay the full cost of premiums for such welfare benefits during the six-month period and the Company shall pay the Employee an amount equal to the amount of such premiums paid by the Employee during such six-month period promptly after its conclusion.

(b) The Parties hereto acknowledge and agree that the interpretation of Section 409A and its application to the terms of this Agreement is uncertain and may be subject to change as additional guidance and interpretations become available. Anything to the contrary herein notwithstanding, all benefits or payments provided by the Company to the Employee that would be deemed to constitute “nonqualified deferred compensation” within the meaning of Section 409A are intended to comply with Section 409A. If, however, any such benefit or payment is deemed to not comply with Section 409A, the Company and the Employee agree to renegotiate in good faith any such benefit or payment (including, without limitation, as to the timing of any severance payments payable hereof) so that either (i) Section 409A will not apply or (ii) compliance with Section 409A will be achieved. Notwithstanding the foregoing, the Company makes no guarantee of any federal, state or local tax consequences with respect to the interpretation of Section 409A and its application to the terms of this Agreement, and the Company shall have no liability for any adverse tax consequences of the Employee, as a result of any violation of Section 409A.

(c) Notwithstanding anything to the contrary contained in this Agreement, all reimbursements for costs and expenses under this Agreement shall be paid in no event later than the end of the taxable year following the taxable year in which the Employee incurs such expense. With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit and (ii) the amount of expenses eligible for reimbursements or in-kind benefits provided during any taxable year shall not affect the expenses eligible for reimbursement or in-kind benefits to be provided in any other taxable year, provided, however, that the foregoing clause (ii) shall not be violated with regard to expenses reimbursed under any arrangement covered by Section 105(b) of the Internal Revenue Code of 1986, as amended, solely because such expenses are subject to a limit related to the period the arrangement is in effect.

(d) If under this Agreement, an amount is paid in two or more installments, for purposes of Section 409A, each installment shall be treated as a separate payment.

(e) A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits subject to Section 409A upon or following a termination of employment unless such termination is also a "separation from service" as defined in Treas. Reg. Section 1.409A-1(h), including the default presumptions, and for purposes of any such provision of this Agreement, references to a "resignation," "termination," "terminate," "termination of employment" or like terms shall mean separation from service.

10. Confidential Arbitration. The Employee and the Company hereby agree that any controversy or claim arising out of or relating to this Agreement, including the arbitrability of any controversy or claim, which cannot be settled by mutual agreement will be finally settled by confidential and binding arbitration in accordance with the Federal Arbitration Act. Further, notwithstanding the preceding sentence, in the event disputes arise that relate in any way to and concern this Agreement and also relate in any way to and concern one or more other Equity Agreements, the Parties agree that such disputes may be joined in a single binding arbitration if doing so would not result in unreasonable delay. All arbitrations shall be administered by a panel of three neutral arbitrators (the "Panel") admitted to practice law in Texas for at least ten (10) years, in accordance with the American Arbitration Association Rules. Any such arbitration proceeding shall be administered by the American Arbitration Association and all hearings shall take place in Dallas County, Texas. The arbitration proceeding and all related documents will be confidential, unless disclosure is required by law. The Panel will have the authority to award the same remedies, damages, and costs that a court could award, including but not limited to the right to award injunctive relief in accordance with the other provisions of this Agreement. Further, the Parties specifically agree that, in the interest of minimizing expenses and promoting early resolution of claims, the filing of dispositive motions shall be permitted and that prompt resolution of such motions by the Panel shall be encouraged. The Panel shall issue a written reasoned award explaining the decision, the reasons for the decision, and any damages awarded. The Panel's decision will be final and binding. The judgment on the award rendered by the Panel may be entered in any court having jurisdiction thereof. This provision can be enforced under the Federal Arbitration Act. The Panel shall be permitted to award only those remedies in law or equity that are requested by the Parties, appropriate for the claims and supported by evidence, and each Party shall be required to bear its or his own arbitration costs, attorneys' fees and expenses.

(a) The decision of the arbitrator on the points in dispute will be final, unappealable and binding, and judgment on the award may be entered in any court having jurisdiction thereof. The Parties agree that this provision has been adopted by the Parties to rapidly and inexpensively resolve any disputes between them and that this provision will be grounds for dismissal of any court action commenced by any Party with respect to this Agreement, other than post-arbitration actions seeking to enforce an arbitration award.

(b) The Parties will keep confidential, and will not disclose to any person, except as may be required by law, the existence of any controversy under this Paragraph 10, the referral of any such controversy to arbitration or the status or resolution thereof. In addition, the confidentiality restrictions set forth in this Agreement shall continue in full force and effect.

(c) As the sole exception to the exclusive and binding nature of the arbitration commitment set forth above, the Parties agree that the Company Group may resort to Texas state courts having equity jurisdiction in and for Dallas County, Texas and the United States District Court for the Northern District of Texas, Dallas Division, at its sole option, to request temporary, preliminary, and/or permanent injunctive or other equitable relief, including, without limitation, specific performance, to enforce the post-employment restrictions and other non-solicitation and confidentiality obligations set forth in this Agreement, without the necessity of proving inadequacy of legal remedies or irreparable harm or posting bond or giving notice, to the maximum extent permitted by law. However, nothing in this Paragraph 10 should be construed to constitute a waiver of the Parties' rights and obligations to arbitrate as set forth in this Paragraph 10.

(d) IN THE EVENT THAT ANY COURT OF COMPETENT JURISDICTION OR ARBITRATOR DETERMINES THAT THE SCOPE OF THE ARBITRATION OR RELATED PROVISIONS OF THIS AGREEMENT ARE TOO BROAD TO BE ENFORCED AS WRITTEN, THE PARTIES INTEND THAT THE COURT REFORM THE PROVISION IN QUESTION TO SUCH NARROWER SCOPE AS IT DETERMINES TO BE REASONABLE AND ENFORCEABLE. EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS BEEN INFORMED BY THE OTHER PARTY HERETO THAT THIS PARAGRAPH 10(d) CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH IT OR HE IS RELYING AND WILL RELY IN ENTERING INTO THIS AGREEMENT.

BEFORE ACCEPTING THE TERMS OF THIS AGREEMENT, INCLUDING THE
RESTRICTIVE COVENANT TERMS, PLEASE READ AND
UNDERSTAND YOUR CONTINUING OBLIGATIONS TO THE COMPANY AND
ITS AFFILIATES.

11. Indemnification. The Company shall indemnify Employee to the fullest extent permitted by Section 145 of the Delaware General Corporation Law against all costs, expenses, liabilities and losses, including but not limited to, attorneys fees, judgments, fines, penalties, taxes and amounts paid in settlement, reasonably incurred by Employee in conjunction with any action, suit, or proceeding, whether civil, criminal, administrative, or investigative in nature, which the Employee is made or threatened to be made a party or witness by reason of his position as officer, employee or agent of the Company or otherwise due to his association with the Company or due to his position or association with any other entity, at the request of the Company. The Company shall advance to Employee all reasonable costs and expenses incurred in connection with such action within twenty (20) days after receipt by the Company of Employee's written request. The Company shall be entitled to be reimbursed by Employee and Employee agrees to reimburse the Company if it is determined that Employee is not entitled to be indemnified with respect to an action, suit, or proceeding under applicable law. The Company shall not settle any such claim in any manner which would impose liability, including monetary penalties or censure, on the Employee without his prior written consent, unless the Employee would be harmed by such action.

12. Governing Law; Submission to Jurisdiction; Jury Waiver. THIS AGREEMENT SHALL BE EXCLUSIVELY GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICTS OF LAW DOCTRINE. THE VENUE FOR ANY ENFORCEMENT OF THE ARBITRATION AWARD SHALL BE EXCLUSIVELY IN THE COURTS IN DALLAS, TEXAS, AND THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION. THE PARTIES WAIVE ANY RIGHT TO A JURY TRIAL.

13. Severability. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, then the Parties will be relieved of all obligations arising under such provision, but only to the extent it is illegal, unenforceable, or void. The Parties intend that this Agreement will be deemed amended by modifying any such illegal, unenforceable, or void provision to the extent necessary to make it legal and enforceable while preserving its intent, or if such is not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives. Notwithstanding the foregoing, if the remainder of this Agreement will not be affected by such declaration or finding and is capable of substantial performance, then each provision not so affected will be enforced to the extent permitted by law.

14. Waiver. No delay or omission by any Party to this Agreement to exercise any right or power under this Agreement will impair such right or power or be construed as a waiver thereof. A waiver by any of the Parties to this Agreement of any of the covenants to be performed by the other or any breach thereof will not be construed to be a waiver of any succeeding breach thereof or of any other covenant contained in this Agreement. All remedies provided for in this Agreement will be cumulative and in addition to and not in lieu of any other remedies available to any Party at law, in equity or otherwise.

15. Notices. Any notices, consents, demands, requests, approvals and other communications to be given under this Agreement by any Party to the other shall be deemed to have been duly given if given in writing and personally delivered or sent by mail (registered or certified) or by a recognized "next-day delivery service" to the address set forth below a Party's signature, with a courtesy copy provided to the Company's General Counsel.

16. Entire Agreement. This Agreement and the Equity Arrangements represents the entire agreement relating to employment between the Company and Employee and supersedes all previous oral and written and all contemporaneous oral negotiations or commitments, writings and other understandings which, at the Effective Date, shall be deemed to be terminated and of no further force or effect. No prior or subsequent promises, representation, or understandings relative to any terms or conditions of employment are to be considered as part of this Agreement or as binding.

17. Amendment. This Agreement may be amended or modified only (i) in a writing signed by the Parties hereto and (ii) with the prior written consent of Parent.

18. Guarantee of Payment and Performance. D&B agrees to guarantee in all respects the payment and performance obligations of D&B Management set forth in this Agreement.

19. Withholding. The Company shall be entitled to withhold from any amounts to be paid or benefits provided to the Employee hereunder any federal, state, local, or foreign withholding or other taxes or charges which it is from time to time required to withhold. The Company shall be entitled to rely on an opinion of counsel if any question as to the amount or requirement of any such withholding shall arise.

20. Acknowledgment. By signing below, as a material inducement to the Company entering into this Agreement, Employee unconditionally represents and warrants that: (a) Employee has been advised to consult with an attorney regarding the terms of this Agreement; (b) Employee has consulted with, or has had sufficient opportunity to consult with Employee's own counsel or other advisors regarding the terms of this Agreement; (c) Employee has relied solely on Employee's own judgment and that of Employee's attorneys, advisors, and representatives regarding the consideration for, and the terms of, this Agreement; (d) any and all questions regarding the terms of this Agreement have been asked and answered to Employee's complete satisfaction; (e) Employee has read this Agreement and fully understand its terms and their import; and (f) Employee is entering into this Agreement voluntarily, of Employee's own free will, and without any duress, coercion, fraudulent inducement, or undue influence exerted by or on behalf of any other Party or any other person or entity.

21. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the Effective Date.

COMPANY:

**DAVE & BUSTER'S MANAGEMENT CORPORATION,
INC.**

By: _____
Name:

Address: 2481 Manana Drive
Dallas, Texas 75220

DAVE & BUSTER'S, INC.

By: _____
Name:

Address: 2481 Manana Drive
Dallas, Texas 75220

EMPLOYEE:

Address:

[SIGNATURE PAGE TO EMPLOYMENT AGREEMENT]