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X	QUARTERLY REPORT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT
----	FOR THE QUARTER ENDED AUGUST 5, 2001.
	TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES ACT
----	OF 1934 FOR THE TRANSACTION PERIOD FROM                      TO                      .

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

	13 Weeks Ended		26 Weeks Ended	
	August 5, 2001	July 30, 2000	August 5, 2001	July 30, 2000
Food and beverage revenues	\$ 41,542	\$ 38,490	\$ 85,154	\$ 77,470
Amusement and other revenues	42,080	39,076	86,678	77,945
Total revenues	83,622	77,566	171,832	155,415
Cost of revenues	15,761	14,539	32,256	28,554
Operating payroll and benefits	25,410	23,291	52,634	46,556
Other store operating expenses	24,782	21,773	48,991	43,611
General and administrative expenses	4,958	4,804	10,254	9,654
Depreciation and amortization expense	7,157	6,248	13,908	11,982
Preopening costs	821	1,502	1,900	3,557
Total costs and expenses	78,889	72,157	159,943	143,914
Operating income	4,733	5,409	11,889	11,501
Interest expense, net	2,058	2,012	4,380	3,539
Income before provision for income taxes	2,675	3,397	7,509	7,962
Provision for income taxes	968	1,247	2,718	2,922
Net income	\$ 1,707	\$ 2,150	\$ 4,791	\$ 5,040
Basic net income per share	\$ 0.13	\$ 0.17	\$ 0.37	\$ 0.39
Basic weighted average shares outstanding	12,954	12,953	12,954	12,953
Diluted net income per share	\$ 0.13	\$ 0.17	\$ 0.37	\$ 0.39
Diluted weighted average shares outstanding	13,028	12,954	13,049	12,957

See accompanying notes to consolidated financial statements.

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

ASSETS

	August 5, 2001 (unaudited)	February 4, 2001
Current assets:		
Cash and cash equivalents	\$ 2,718	\$ 3,179
Inventories	22,481	21,758
Prepaid expenses	4,394	3,663
Other current assets	2,416	1,787
Total current assets	32,009	30,387
Property and equipment, net	269,047	260,467
Goodwill, net of accumulated amortization of \$2,422 and \$2,263	7,286	7,445
Other assets	5,570	5,576
Total assets	\$ 313,912	\$ 303,875

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities:		
Current installments of long-term debt	\$ 4,125	\$ 4,124
Accounts payable	12,315	9,291
Accrued liabilities	8,533	7,050

Income taxes payable	3,237	3,567
Deferred income taxes	1,221	1,229
	-----	-----
Total current liabilities	29,431	25,261
Deferred income taxes	8,710	7,667
Other liabilities	5,483	4,700
Long-term debt, less current installments	103,063	103,860
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, 10,000,000 authorized; none issued	--	--
Common stock, \$0.01 par value, 50,000,000 authorized; 12,953,375 shares issued and outstanding as of August 5, 2001 and February 4, 2001, respectively	131	131
Paid in capital	115,659	115,659
Restricted stock awards	290	243
Retained earnings	52,991	48,200
	-----	-----
	169,071	164,233
Less: treasury stock, at cost (175,000 shares)	1,846	1,846
	-----	-----
Total stockholders' equity	167,225	162,387
	-----	-----
Total liabilities and stockholders' equity	\$ 313,912	\$ 303,875

See accompanying notes to consolidated financial statements.

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

	Common Stock -----							
	Shares	Amount	Paid in Capital	Retained Earnings	Restricted Stock Awards	Treasury Stock	Total	
	-----	-----	-----	-----	-----	-----	-----	-----
Balance, February 4, 2001	12,953	\$ 131	\$ 115,659	\$ 48,200	\$ 243	\$ (1,846)	\$ 162,387	
Amortization of restricted stock awards	--	--	--	--	47	--	47	
Net income	--	--	--	4,791	--	--	4,791	
	-----	-----	-----	-----	-----	-----	-----	
Balance, August 5, 2001	12,953	\$ 131	\$ 115,659	\$ 52,991	\$ 290	\$ (1,846)	\$ 167,225	

See accompanying notes to consolidated financial statements.

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

	26 Weeks Ended	
	August 5, 2001	July 30, 2000
Cash flows from operating activities		
Net income	\$ 4,791	\$ 5,040
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	13,908	11,982
Provision for deferred income taxes	1,035	(476)
Restricted stock awards	47	--
Changes in assets and liabilities		
Inventories	(723)	(1,244)
Prepaid expenses	(731)	(1,970)
Other assets	(626)	(3,833)
Accounts payable	3,024	1,554
Accrued liabilities	1,483	2,010
Income taxes payable	(330)	1,448
Other liabilities	783	1,204
Net cash provided by operating activities	22,661	15,715
Cash flows from investing activities:		
Capital expenditures	(22,326)	(27,360)
Net cash used by investing activities	(22,326)	(27,360)
Cash flows from financing activities:		
Borrowings under long-term debt	13,250	113,420
Repayments of long-term debt	(14,046)	(102,920)
Net cash provided (used) by financing activities	(796)	10,500
Decrease in cash and cash equivalents	(461)	(1,145)
Beginning cash and cash equivalents	3,179	3,091
Ending cash and cash equivalents	\$ 2,718	\$ 1,946

See accompanying notes to consolidated financial statements.

DAVE & BUSTER'S, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

AUGUST 5, 2001

(UNAUDITED)

(DOLLARS IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

NOTE 1: RESULTS OF OPERATIONS

The results of operations for the interim periods reported are not necessarily indicative of results to be expected for the year. The information furnished herein reflects all adjustments (consisting only of normal recurring

adjustments) which are, in the opinion of management, necessary to fairly present the results of operations and financial position for the interim periods.

#### NOTE 2: BASIS OF PRESENTATION

**BASIS OF PRESENTATION.** The consolidated financial statements include the accounts of Dave & Buster's, Inc. and wholly-owned subsidiaries (the "Company"). All material intercompany accounts and transactions have been eliminated in consolidation. The consolidated balance sheet data presented herein for February 4, 2001 was derived from the Company's audited consolidated financial statements for the fiscal year then ended. The preparation of financial statements in accordance with generally accepted accounting principles requires the Company's management to make certain estimates and assumptions for the reporting periods covered by the financial statements. These estimates and assumptions affect the reported amounts of assets, liabilities, revenues and expenses. Actual amounts could differ from these estimates. The Company's one industry segment is the ownership and operation of restaurant/entertainment Complexes (a "Complex" or "Store") under the name "Dave & Buster's" which are principally located in the United States.

**CHANGE IN METHOD OF ACCOUNTING.** The Company adopted Statement of Financial Accounting Standards No. 133, Accounting for Derivative Instruments and Hedging Activities ("FAS 133") effective February 5, 2001. FAS 133 requires the Company to recognize all derivatives on the balance sheet at fair value. Derivatives that are not hedges must be adjusted to fair value through income. If the derivative is a hedge, depending on the nature of hedge, changes in fair value of derivatives will either be offset against the change in fair value of the hedged assets, liabilities, or firm commitments through earnings or recognized in other comprehensive income until the hedged item is recognized in earnings. The ineffective portion of a derivative's change in fair value will be immediately recognized in earnings. During the current quarter, the Company has entered into an agreement that expires in 2007, to fix its variable-rate debt to fixed-rate debt (5.44% at August 5, 2001) on notional amounts aggregating \$55,000. The market risks associated with the agreements are mitigated because increased interest payments under the agreement resulting from a decrease in LIBOR are effectively offset by decreased payments under the debt obligation. The Company is exposed to credit losses for periodic settlements of amounts due under the agreements. Such amounts were not material at August 5, 2001.

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

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The Company will apply the new rules on accounting for goodwill and other intangible assets beginning in the first quarter of 2002. Application of the nonamortization provisions of the Statements is expected to result in an increase in net income of \$243 (\$.02 per diluted share) in 2002 as a result of nonamortization of existing goodwill. During 2002, the Company will perform the first of the required impairment tests of goodwill and indefinite lived intangible assets as of February 4, 2002 and has not yet determined what the effect of these tests will be on the earnings and financial position of the Company.

#### NOTE 3: CONTINGENCIES

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

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

Results of Operations - 13 Weeks Ended August 5, 2001 Compared to 13 Weeks Ended July 30, 2000

Total revenues increased to \$83,622 for the 13 weeks ended August 5, 2001 from \$77,566 for the 13 weeks ended July 30, 2000, an increase of \$6,056 or 8%. New stores opened in fiscal 1999 and 2000 and the first quarter of 2001 increased revenues during the period by \$11,598. Revenues at comparable stores decreased 1.9% for the 13 weeks ended August 5, 2001. The decrease in comparable stores revenues was primarily attributable to a decline in company sponsored private parties. Total revenues for the 13 weeks ended August 5, 2001 from licensing agreements were \$125.

Cost of revenues increased to \$15,761 for the 13 weeks ended August 5, 2001 from \$14,539 for the 13 weeks ended July 30, 2000, an increase of \$1,222 or 8%. The increase was principally attributable to the 8% increase in revenues. As a percentage of revenues, cost of revenues increased to 18.8% in the 13 weeks ended August 5, 2001 from 18.7% in the 13 weeks ended July 30, 2000 due to lower food and beverage costs offset by higher amusement costs associated with redemption and freight costs.

Operating payroll and benefits increased to \$25,410 for the 13 weeks ended August 5, 2001 from \$23,291 for the 13 weeks ended July 30, 2000, an increase of \$2,119 or 9%. As a percentage of revenue, operating payroll and benefits increased to 30.4% in the 13 weeks ended August 5, 2001 from 30.0% in the 13 weeks ended July 30, 2000 due to higher fixed labor and fringe benefit costs due to increased headcounts offset by lower variable labor costs.

Other store operating expenses increased to \$24,782 for the 13 weeks ended August 5, 2001 from \$21,773 for the 13 weeks ended July 30, 2000, an increase of \$3,009 or 14%. As a percentage of revenues, other store operating expenses were 29.6% of revenues in the 13 weeks ended August 5, 2001 as compared to 28.1% of revenues in the 13 weeks ended July 30, 2000. Other store operating expenses as a percentage of revenue increased due to higher utility, marketing and occupancy costs.

General and administrative increased to \$4,958 for the 13 weeks ended August 5, 2001 from \$4,804 for the 13 weeks ended July 30, 2000, an increase of \$154 or 3%. As a percentage of revenues, general and administrative expenses decreased to 5.9% in the 13 weeks ended August 5, 2001 from 6.2% in the 13 weeks ended July 30, 2000.

Depreciation and amortization increased to \$7,157 for the 13 weeks ended August 5, 2001 from \$6,248 for the 13 weeks ended July 30, 2000, an increase of \$909 or 15%. As a percentage of revenues, depreciation and amortization increased to 8.6% from 8.1% for the comparable period due to new store openings.

Preopening costs decreased to \$821 for the 13 weeks ended August 5, 2001 from \$1,502 for the 13 weeks ended July 30, 2000. The timing of complex openings affects the amount of such costs in any given period.

Interest expense increased to \$2,058 for the 13 weeks ended August 5, 2001 from \$2,012 for the 13 weeks ended July 30, 2000. The increase was primarily due to higher average debt offset by lower interest rates in fiscal year 2001.

The effective tax rate for the 13 weeks ended August 5, 2001 was 36.2% as compared to 36.7% for the 13 weeks ended July 30, 2000.

Results of Operations - 26 Weeks Ended August 5, 2001 Compared to 26 Weeks Ended July 30, 2000

Total revenues increased to \$171,832 for the 26 weeks ended August 5, 2001 from

\$155,415 for the 26 weeks ended July 30, 2000, an increase of \$16,417 or 11%. New stores opened in fiscal 1999 and 2000 and the first of 2001 increased revenues during the period by \$18,134. Revenues at comparable stores decreased 1.9% for the 26 weeks ended August 5, 2001. The decrease in comparable stores revenues was primarily attributable to a decline in company sponsored private parties. Total revenues for the 26 weeks ended August 5, 2001 from licensing agreements were \$295.

Cost of revenues increased to \$32,256 for the 26 weeks ended August 5, 2001 from \$28,554 for the 26 weeks ended July 30, 2000, an increase of \$3,702 or 13%. The increase was principally attributable to the 11% increase in revenues. As a percentage of revenues, cost of revenues decreased to 18.8% in the 26 weeks ended August 5, 2001 from 18.4% in the 26 weeks ended July 30, 2000 due to lower food and beverage costs offset by higher amusement costs.

Operating payroll and benefits increased to \$52,634 for the 26 weeks ended August 5, 2001 from \$46,556 for the 26 weeks ended July 30, 2000, an increase of \$6,078 or 13%. As a percentage of revenue, operating payroll and benefits increased to 30.6% in the 26 weeks ended August 5, 2001 from 30.0% in the 26 weeks ended July 30, 2000 due to higher fixed labor and fringe benefit costs due to higher headcounts offset by slightly lower variable labor costs.

Other store operating expenses increased to \$48,991 for the 26 weeks ended August 5, 2001 from \$43,611 for the 26 weeks ended July 30, 2000, an increase of \$5,380 or 12%. As a percentage of revenues, other store operating expenses were 28.5% of revenues in the 26 weeks ended August 5, 2001 as compared to 28.1% of revenues in the 26 weeks ended July 30, 2000. Other store operating expenses were higher due to increased utility and marketing costs at the stores.

General and administrative increased to \$10,254 for the 26 weeks ended August 5, 2001 from \$9,654 for the 26 weeks ended July 30, 2000, an increase of \$600 or 6%. As a percentage of revenues, general and administrative expenses decreased to 6.0% in the 26 weeks ended August 5, 2001 from 6.2% in the 26 weeks ended July 30, 2000.

Depreciation and amortization increased to \$13,908 for the 26 weeks ended August 5, 2001 from \$11,982 for the 26 weeks ended July 30, 2000, an increase of \$1,926 or 16%. As a percentage of revenues, depreciation and amortization increased to 8.1% from 7.7% for the comparable period.

Preopening costs decreased to \$1,900 for the 26 weeks ended August 5, 2001 from \$3,557 for the 26 weeks ended July 30, 2000. The timing of complex openings affects the amount of such costs in any given period.

Interest expense increased to \$4,380 for the 26 weeks ended August 5, 2001 from \$3,539 for the 26 weeks ended July 30, 2000. The increase was primarily due to higher average debt offset by lower interest rates in fiscal year 2000.

The effective tax rate for the 26 weeks ended August 5, 2001 was 36.2% as compared to 36.7% for the 26 weeks ended July 30, 2000.

#### Liquidity and Capital Resources

Cash flows from operations increased to \$22,661 for the 26 weeks ended August 5, 2001 from \$15,715 for the 26 weeks ended July 30, 2000. The increase was attributable to a decrease in net income offset by an increase in depreciation and amortization and an increase in operational receipts.

The Company has a \$110,000 senior secured revolving credit and term loan facility. The facility includes a five-year revolver and five and seven-year term debt. Borrowing under the facility bears interest at a floating rate based on LIBOR or, at the Company's option, the bank's prime rate plus, in each case, a margin based upon financial performance (7.8% at August 5, 2001) and is secured by all assets of the Company. The facility has certain financial covenants including a minimum consolidated tangible net worth level, a maximum leverage ratio, minimum fixed charge coverage and maximum level of capital expenditures. At August 5, 2001, \$3,250 was available under this facility.

The Company has entered into an agreement that expires in 2007, to fix its variable-rate debt to fixed-rate debt (5.44% at August 5, 2001) on notional amounts aggregating \$55,000. The market risks associated with the agreements are mitigated because increased interest payments under the agreement resulting from a decrease in LIBOR are effectively offset by decreased payments under the debt obligation. The Company is exposed to credit losses for periodic settlements of amounts due under the agreements. Such amounts were not material at August 5, 2001.

The Company's plan is to open four complexes in fiscal 2001 and 2002, respectively. The Company estimates that its capital expenditures will be approximately \$44,000 and \$48,000 for 2001 and 2002, respectively. The Company intends to finance this development with cash flow from operations, the senior secured revolving credit and term loan facility, and other additional resources which management is currently pursuing. Through August 14, 2001, the Company opened a new store in Miami, Florida and in Frisco, Texas.

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

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

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

(a) - (b) At the Company's Annual Meeting of Shareholders on June 14, 2001, the following were elected for a term of three years:

##### Class III

Allen J. Bernstein  
Bruce H. Hallett

The following directors continued their terms of office as directors of the Company after the Annual Meeting:

##### Class I

David O. Corriveau  
Mark A. Levy  
Christopher C. Maguire

##### Class II

James W. Corley  
Peter A. Edison  
Walter S. Henrion

(c) The following matters were voted upon at the Annual Meeting:

##### 1. Directors:

	For ---	Against -----	Withheld/Abstain -----
Bruce H. Hallett	10,409,689		912,907
Allen J. Bernstein	10,409,689		912,907

##### 2. Amendment of Stock Plan to increase number of shares



issuable upon awards from 2,350,000 to 2,950,000 shares:

For ---	Against -----	Withheld/Abstain -----
9,770,175	1,527,509	24,912

3. Stock Option Plan for Outside Directors to increase the number of shares issuable upon grants of stock options from 150,000 to 190,000:

For ---	Against -----	Withheld/Abstain -----
10,050,536	1,244,556	27,504

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#### ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

##### (a) Exhibits

- 10.1.1 Amendment No. 1 to Revolving Credit and Term Loan Agreement dated as of May 31, 2001 by and among the Company and its subsidiaries, Fleet National Bank (as agent) and the financial institutions named therein.
- 10.13 Executive Retention Agreement for Charles Michel dated June 11, 2001
- 10.14 Executive Retention Agreement for Sterling R. Smith dated June 11, 2001
- 10.15 Executive Retention Agreement for Bryan L. Spain dated June 8, 2001

##### (b) Reports on Form 8-K

No reports on Form 8-K were filed during the 13 weeks ended August 5, 2001.

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#### SIGNATURE

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

DAVE & BUSTER'S, INC.

Dated: September 14, 2001

by /s/ David O. Corriveau

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

Dated: September 14, 2001  
-----

by /s/ Charles Michel  
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Charles Michel  
Vice President,  
Chief Financial Officer

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EXHIBIT INDEX

EXHIBIT NUMBER -----	DESCRIPTION -----
10.1.1	Amendment No. 1 to Revolving Credit and Term Loan Agreement dated as of May 31, 2001 by and among the Company and its subsidiaries, Fleet National Bank (as agent) and the financial institutions named therein.
10.13	Executive Retention Agreement for Charles Michel dated June 11, 2001
10.14	Executive Retention Agreement for Sterling R. Smith dated June 11, 2001
10.15	Executive Retention Agreement for Bryan L. Spain dated June 8, 2001

AMENDMENT NO. 1  
TO  
REVOLVING CREDIT AND TERM LOAN AGREEMENT

This AMENDMENT NO. 1 TO REVOLVING CREDIT AND TERM LOAN AGREEMENT dated as of May 31, 2001 (this "Amendment"), by and among DAVE & BUSTER'S, INC. ("D & B"), the Subsidiaries of D&B (D&B collectively with such subsidiaries, the "Borrowers"), FLEET NATIONAL BANK ("FNB"), the other lending institutions listed on Schedule 1 to the Credit Agreement (together with FNB, the "Banks") and FNB as administrative agent for the Banks (the "Agent"), amends certain provisions of the Revolving Credit and Term Loan Agreement, dated as of June 30, 2000 among the Borrowers, the Banks, the Agent and Bank One, Texas, N.A., as documentation agent (as amended and in effect from time to time, the "Credit Agreement"). Capitalized terms used herein without definition shall have the meanings assigned to such terms in the Credit Agreement.

WHEREAS, D & B has created a new subsidiary, Dave & Buster's of Hawaii, Inc.;

WHEREAS, pursuant to Section 9.17 of the Credit Agreement, Dave & Buster's of Hawaii, Inc. is required to become a Borrower under the Credit Agreement and a party to the Security Documents;

WHEREAS, the Borrowers, the Banks and the Agent desire to increase the aggregate permitted principal amount of the Revolving Credit Loans available under the Credit Agreement as provided more fully herein below;

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

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

SECTION 2. AMENDMENT TO SCHEDULE 1 OF THE CREDIT AGREEMENT. Schedule 1 to the Credit Agreement is hereby amended by deleting such Schedule 1 in its entirety and substituting in place thereof the Schedule 1 attached to this Amendment and made a part hereof.

SECTION 3. AMENDMENT TO SCHEDULE 8.18 OF THE CREDIT AGREEMENT. Schedule 8.18 to the Credit Agreement is hereby amended by deleting such Schedule 8.18 in its entirety and substituting in place thereof the Schedule 8.18 attached to this Amendment and made a part hereof.

SECTION 4. AFFIRMATION AND ACKNOWLEDGMENT. Each Borrower hereby ratifies and confirms all of its Obligations to the Banks and the Agent, including, without limitation, the Loans, and the Borrowers hereby affirm their joint and several absolute and unconditional promise to pay to the Banks the Loans, the Reimbursement Obligations, and all other amounts due under the Credit Agreement as amended hereby. Each Borrower hereby confirms that the Obligations are and remain secured pursuant to the Security Documents and pursuant to all other instruments and documents executed and delivered by each Borrower as security for the Obligations.

SECTION 5. REPRESENTATIONS AND WARRANTIES. Each Borrower hereby represents and warrants to the Banks and the Agent as follows:

(a) The execution and delivery by each Borrower of this Amendment and the Revolving Credit Note payable to the order of Guaranty Bank ("GB") executed and delivered in connection with this Amendment as provided in Section 6.2 of this Amendment (the "New Note") and the performance by each Borrower of its obligations and agreements under this Amendment, the Credit Agreement as amended hereby and the New Note are within the corporate authority of such Borrower, have been duly authorized by all necessary corporate proceedings on behalf of such Borrower, and do not and will not contravene any provision of law, statute, rule or regulation to which such Borrower is subject or any of such Borrower's charter, other incorporation papers, by-laws or any stock provision or any amendment thereof or of any agreement or other instrument binding upon such Borrower.

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

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

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(d) The representations and warranties contained in Section 8 of the Credit Agreement are true and correct at and as of the date made and as of the date hereof, except to the extent of changes resulting from transactions contemplated or permitted by the Credit Agreement and the other Loan Documents and changes occurring in the ordinary course of business that singly or in the aggregate are not materially adverse, and to the extent that such representations and warranties relate expressly to an earlier date.

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

SECTION 6. EFFECTIVENESS. This Amendment shall become effective upon the satisfaction of the following conditions precedent:

SECTION 6.1. JOINDER DOCUMENTS. Dave & Buster's of Hawaii Inc. shall duly execute and deliver to the Agent allonges to each of the Revolving Credit Notes and the Term Notes, an Agency Account Agreement, and certificates of insurance, in form and substance reasonably satisfactory to the Agent. D&B shall deliver to the Agent to be held under the Stock Pledge Agreement as security for the Obligations a Stock certificate representing all of the issued and outstanding Capital Stock of Dave & Buster's of Hawaii, Inc., together with a stock power duly executed in blank in form and substance reasonably satisfactory to the Agent.

SECTION 6.2. LOAN DOCUMENTS. Each of this Amendment, the Revolving Credit Note substantially in the form of Exhibit A to the Credit Agreement and payable to the order of GB reflecting the increase in the Revolving Credit Commitment of GB effected hereby, and all related documents shall have been duly executed and delivered by each of the Borrowers and, in the case of the Amendment and such other related documents, the other parties hereto, shall be in full force and effect and shall be in form and substance reasonably satisfactory to the Agent.

SECTION 6.3. CORPORATE ACTION. All corporate action necessary for the valid execution, delivery and performance by each Borrower of

this Amendment, the New Note and each of the other related documents to which it is or is to become a party, shall have been duly and effectively taken, and evidence thereof reasonably satisfactory to the Agent shall have been provided to the Agent.

SECTION 6.4. CERTIFIED COPIES OF CHARTER DOCUMENTS; GOOD STANDING. The Agent shall have received from the Borrowers and each of their Subsidiaries (i) a certificate certifying that its charter or other incorporation documents and by-laws delivered to the Agent on the Closing Date have not been amended (or, if such documents have been amended, certified copies of such documents as so amended) and (ii) a good standing certificate for each Borrower issued

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by the secretary of state of the jurisdiction under the laws of which such Borrower is organized.

SECTION 6.5. INCUMBENCY CERTIFICATE. The Agent shall have received from the Borrowers and each of their Subsidiaries an incumbency certificate, dated as of the date of this Amendment, signed by a duly authorized officer of such Person, and giving the name and bearing a specimen signature of each individual who shall be authorized: (i) to sign, in the name and on behalf of such Person, each of this Amendment and the New Note; (ii) in the case of each Borrower, to make Revolving Credit Loan Requests and Conversion Requests and to apply for Letters of Credit; and (iii) to give notices and to take other action on its behalf under the Loan Documents.

SECTION 6.6. VALIDITY OF LIENS. The Security Documents shall be effective to create in favor of the Agent for the benefit of the Banks and the Agent a legal, valid and enforceable first (except for Permitted Liens entitled to priority under applicable law) security interest in and lien upon the Collateral. All filings, recordings, deliveries of instruments and other actions necessary or desirable in the opinion of the Agent to protect and preserve such security interests shall have been duly effected. The Agent shall have received evidence thereof in form and substance satisfactory to the Agent.

SECTION 6.7. PERFECTION CERTIFICATES AND UCC SEARCH RESULTS. The Agent shall have received from the Borrowers and each of their Subsidiaries a completed and fully executed Perfection Certificate.

SECTION 6.8. ASSIGNMENT AND ACCEPTANCE. An Assignment and Acceptance substantially in the form of Exhibit F attached to the Credit Agreement and pursuant to which GB shall have assigned to ORIX Financial Services, Inc. ("Orix") a \$2,500,000 interest in the Term Loan A advanced by GB shall have been executed by GB, ORIX, D&B, and the Agent and delivered to the Agent and the Borrowers shall have delivered to the Agent a Term A Note substantially in the form of Exhibit C to the Credit Agreement and payable to Orix in the amount of \$2,500,000.

SECTION 6.9. NO MATERIAL ADVERSE CHANGE. The Agent shall be satisfied that there shall have occurred no material adverse change in the business, operations, assets, management, properties, financial condition, income or prospects of the Borrowers and their Subsidiaries taken as a whole since February 4, 2001.

SECTION 6.10. REPRESENTATIONS TRUE; NO EVENT OF DEFAULT.

Each of the representations and warranties of any of the Borrowers and their Subsidiaries contained in this Amendment, the Credit Agreement, the

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

SECTION 6.11. PROCEEDINGS AND DOCUMENTS. All proceedings in connection with the transactions contemplated by this Amendment and all other documents incident hereto shall be reasonably satisfactory in substance and in form to the Banks and to the Agent.

#### SECTION 7. MISCELLANEOUS PROVISIONS.

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

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

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

(d) Each Borrower hereby agrees to pay to the Agent, on demand by the Agent, all reasonable out-of-pocket costs and expenses incurred or sustained by the Agent in connection with the preparation of this Amendment and the New Note (including legal fees).

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

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

DAVE & BUSTERS, INC.

By: /s/ Charles Michel

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Name: Charles Michel  
Title: Vice President

DAVE & BUSTER'S I, L.P.

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

By: /s/ Charles Michel

-----  
Name: Charles Michel  
Title: Vice President

DAVE & BUSTER'S OF ILLINOIS, INC.

By: /s/ Charles Michel

-----  
Name: Charles Michel  
Title: Vice President

DAVE & BUSTER'S OF GEORGIA, INC.

By: /s/ Charles Michel

-----  
Name: Charles Michel  
Title: Vice President

DAVE & BUSTER'S OF PENNSYLVANIA, INC.

By: /s/ Charles Michel

-----  
Name: Charles Michel  
Title: Vice President

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DANB TEXAS, INC.

By: /s/ Charles Michel

-----  
Name: Charles Michel  
Title: Vice President

DAVE & BUSTER'S OF MARYLAND, INC.

By: /s/ Charles Michel

-----  
Name: Charles Michel  
Title: Vice President

DAVE & BUSTER'S OF CALIFORNIA, INC.

By: /s/ Charles Michel

-----  
Name: Charles Michel  
Title: Vice President

DAVE & BUSTER'S OF COLORADO, INC.

By: /s/ Charles Michel

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Name: Charles Michel  
Title: Vice President

DAVE & BUSTER'S OF NEW YORK, INC.

By: /s/ Charles Michel

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Name: Charles Michel  
Title: Vice President

DAVE & BUSTER'S OF FLORIDA, INC.

By: /s/ Charles Michel

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Name: Charles Michel  
Title: Vice President

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DAVE & BUSTER'S OF PITTSBURGH, INC.

By: /s/ Charles Michel

-----  
Name: Charles Michel  
Title: Vice President  
,

DAVE & BUSTER'S OF HAWAII, INC.

By: /s/ Charles Michel

-----  
Name: Charles Michel  
Title: Vice President

D&B REALTY HOLDING, INC.

By: /s/ Charles Michel

-----  
Name: Charles Michel  
Title: Vice President

FLEET NATIONAL BANK, individually and as Agent

By: /s/ J. Nicholas Cole

-----  
Name: J. Nicholas Cole  
Title: Director



ORIX FINANCIAL SERVICES, INC.

By: /s/ R. Terry Standifer

-----  
Name: R. Terry Standifer  
Title: Vice President

BANK OF AMERICA, N.A.

By: /s/ Karen O. Meyer

-----  
Name: Karen O. Meyer  
Title: Senior Vice President

BANK ONE, N.A.

By: /s/ Wyatt Dickson

-----  
Name: Wyatt Dickson  
Title: Vice President

GUARANTY BANK

By: /s/ Robert S. Hays

-----  
Name: Robert S. Hays  
Title: Senior Vice President

TRANSAMERICA EQUIPMENT FINANCIAL SERVICES CORPORATION

By: /s/ Randall Allemang

-----  
Name: Randall Allemang  
Title: Vice President

THE FROST NATIONAL BANK

By: /s/ Chris W. Holder

-----  
Name: Chris W. Holder  
Title: Senior Vice President

HELLER FINANCIAL LEASING INC.

By: /s/ Ronald R. Les

-----  
Name: Ronald R. Les  
Title: Vice President

## EXECUTIVE RETENTION AGREEMENT

AGREEMENT by and between Dave & Buster's, Inc. (the "COMPANY"), and Charles Michel (the "EXECUTIVE"), dated as of the 11th day of June, 2001.

The Compensation Committee of the Company, (the "COMMITTEE"), has determined that it is in the best interests of the Company and its owners to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined in Section 2) of Dave & Buster's, Inc. (the "CORPORATION"). The Committee believes it is imperative to minimize distraction of the Executive resulting from personal uncertainties and risks created by a pending or threatened Change of Control, to encourage the Executive's full attention and dedication to the Company currently and in the event of any threatened or pending Change of Control, and to provide the Executive with compensation and benefits arrangements upon a Change of Control that satisfy the compensation and benefits expectations of the Executive and are competitive with those of other corporations. Therefore, in order to accomplish these objectives, the Committee has caused the Company to enter into this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Certain Definitions.

(a) The "EFFECTIVE DATE" shall mean the first date during the Change of Control Period (as defined in Section 1(b)) on which a Change of Control occurs. Anything in this Agreement to the contrary notwithstanding, if a Change of Control occurs and if the Executive's employment with the Company is terminated by the Company within ninety (90) days prior to the date on which the Change of Control occurs, then for all purposes of this Agreement the "EFFECTIVE DATE" shall mean the date immediately prior to the date of such termination of employment.

(b) The "CHANGE OF CONTROL PERIOD" shall mean the period commencing on the date hereof and ending on the third anniversary of such date; provided, however, that commencing on the date one year after the date hereof, 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 Change of Control Period shall be automatically extended so as to terminate three years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company shall give notice to the Executive that the Change of Control Period shall not be so extended.

2. Control. For the purpose of this Agreement, a "CHANGE OF CONTROL" shall mean:

(a) Acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the

Executive Retention Agreement

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"EXCHANGE ACT")) (a "PERSON") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 30% or more of either (i) the then outstanding shares of common stock of the Corporation (the "OUTSTANDING COMMON STOCK") or (ii) the combined voting power of the then outstanding voting securities of the Corporation entitled to vote generally in the election of its directors (the "OUTSTANDING VOTING SECURITIES"); provided, however, that the following acquisitions shall not constitute a Change of Control: (i) any acquisition directly from the Corporation (excluding an acquisition by virtue of the exercise of a conversion privilege), (ii) any acquisition by the Corporation, (iii) any acquisition by any employee benefit plan (or related

trust) sponsored or maintained by the Corporation or any corporation controlled by the Corporation or (iv) any acquisition by any corporation pursuant to a reorganization, merger or consolidation, if, following such reorganization, merger or consolidation, the conditions described in clauses (i), (ii) and (iii) of subsection (c) of this Section 2 are satisfied; or

(b) Individuals who, as of the date hereof, constitute the Board of Directors of the Corporation (the "INCUMBENT BOARD") cease for any reason to constitute at least a majority of the Board of Directors said Corporation (the "BOARD"); provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Corporation's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14.A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(c) Approval by the shareholders of the Corporation of a reorganization, merger or consolidation, in each case, unless, following such reorganization, merger or consolidation, (i) more than 50% of the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation and more than 50% of the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Common Stock and Outstanding Voting Securities immediately prior to such reorganization, merger or consolidation in substantially the same proportions as their ownership immediately prior to such reorganization, merger or consolidation, of the Outstanding Common Stock and Outstanding Voting Securities, as the case may be; (ii) no Person (excluding the Corporation, any employee benefit plan (or related trust) of the Corporation or such corporation resulting from such reorganization, merger or consolidation and any Person beneficially owning, immediately prior to such reorganization, merger or consolidation, directly or indirectly, 30% or more of the Outstanding Common Stock or Outstanding Voting Securities, as the case may be) beneficially owns, directly or indirectly, 30% or more of the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation or the combined voting power of

Executive Retention Agreement

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the then outstanding voting securities of such corporation entitled to vote generally in the election of directors; and (iii) at least a majority of the members of the board of directors of the corporation resulting from such reorganization, merger or consolidation were members of the Incumbent Board at the time of the execution of the initial agreement providing for such reorganization, merger or consolidation; or

(d) Approval by the shareholders of the Corporation of (i) a complete liquidation or dissolution of the Corporation or (ii) the sale or other disposition of all or substantially all of the assets of the Corporation, other than to a corporation with respect to which, following such sale or other disposition, (A) more than 50% of the then outstanding shares of common stock of such corporation and more than 50% of the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Common Stock and Outstanding Voting Securities immediately prior to such sale or other disposition in substantially the same proportion as their ownership immediately prior to such sale or other disposition of the Outstanding Common Stock or Outstanding Voting Securities, as the case may be; (B) no Person (excluding the Corporation and any employee benefit plan (or related trust) of the Corporation or such corporation and any Person beneficially owning, immediately prior to such sale or other disposition, directly or indirectly, 30% or more of the Outstanding Common Stock or

Outstanding Voting Securities, as the case may be) beneficially owns, directly or indirectly, 30% or more of the then outstanding shares of common stock of such corporation or 30% or more of the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors; and (C) at least a majority of the members of the board of directors of such corporation were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board providing for such sale or other disposition of assets of the Corporation.

A "Change of Control" will not include any transaction otherwise covered by subsections (a) through (d) above in which beneficial ownership of the Outstanding Common Stock is acquired by, or the Corporation is merged or consolidated with an affiliate of, a "group" (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) in which David O. Corriveau and James W. Corley are named participants in a Form 13E-3 (or any successor form) filed with the Securities and Exchange Commission and remain as executive officers and directors of the Corporation or its successor after the completion of such transaction.

3. Employment Period. The Company hereby agrees to continue the Executive in its employ, and the Executive hereby agrees to remain in the employ of the Company, in accordance with the terms and provisions of this Agreement, for the period commencing on the Effective Date and ending on the second anniversary of such date (the "EMPLOYMENT PERIOD"). Employment by one or more of the affiliated companies, as hereinafter defined, shall be considered employment by the Company.

Executive Retention Agreement

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#### 4. Terms of Employment.

##### (a) Position and Duties.

(i) During the Employment Period, (A) the Executive's position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be consistent in all material respects with the most significant of those held, exercised or assigned at any time during the 90-day period immediately preceding the Effective Date and (B) the Executive's services shall be performed at the location where the Executive was employed immediately preceding the Effective Date or any office that is the headquarters of the Company and is less than 25 miles from such location.

(ii) During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement for the Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of the Executive's responsibilities to the Company. It is expressly understood and agreed that to the extent that any such activities have been conducted by the Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not hereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company.

##### (b) Compensation.

(i) Base Salary. During the Employment period, the Executive shall receive an annual base salary ("ANNUAL BASE SALARY"), which shall be paid in equal installments on a monthly basis, at least equal to twelve times the highest monthly base salary paid or payable to the Executive by the Company and

its affiliated companies during the twelve-month period immediately preceding the month in which the Effective Date occurs. During the Employment Period, the Annual Base Salary shall be reviewed at least annually and shall be increased at any time and from time to time as shall be substantially consistent with increases in base salary generally awarded in the ordinary course of business to other peer executives of the Company and its affiliated companies. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased. As used in this Agreement, the term "AFFILIATED COMPANIES" shall include any company controlled by, controlling or under common control with the Company.

#### Executive Retention Agreement

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(ii) Annual Bonus. In addition to Annual Base Salary, the Executive shall be awarded, for each fiscal year ending during the Employment Period, an annual bonus (the "ANNUAL BONUS") in cash at least equal to the greater of: (a) the maximum bonus that the Executive could have been paid pursuant to the executive incentive bonus plan in effect ninety (90) days prior to the Effective Date and (b) sixty percent (60%) of the Annual Base Salary then in effect. Each such Annual Bonus shall be paid no later than the end of the third month of the fiscal year next following the fiscal year for which the Annual Bonus is awarded, unless the Executive shall elect to defer the receipt of such Annual Bonus.

(iii) Incentive, Savings and Retirement Plans. During the Employment Period, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies and programs applicable generally to other peer executives of the Company and its affiliated companies. Such plans, practices, policies and programs shall provide the Executive with incentive opportunities (measured with respect to both regular and special incentive opportunities, if any), savings opportunities and retirement benefit opportunities, in each case, as favorable as the most favorable of those provided by the Company and its affiliated companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(iv) Welfare Benefit Plans. During the Employment Period, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, salary continuance, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent applicable generally to other peer executives of the Company and its affiliated companies. Such plans, practices, policies and programs shall provide the Executive with benefits that are, in each case, as favorable, as the most favorable of such plans, practices, policies and programs in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(v) Expenses. During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable employment expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and its affiliated companies in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

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(vi) Fringe Benefits. During the Employment Period, the Executive shall be entitled to fringe benefits in accordance with the most favorable plans, practices, programs and policies of the Company and its affiliated companies in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date, or if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vii) Office and Support Staff. During the Employment Period, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to exclusive personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to the Executive by the Company or its affiliated companies at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(viii) Vacation. During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the most favorable plans, policies, programs and practices of the Company and its affiliated companies as in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

#### 5. Termination of Employment.

(a) Death or Disability. The Executive's employment shall terminate automatically upon the Executive's death during the Employment Period. If the Company determines in good faith that the Disability of the Executive has occurred during the Employment Period (pursuant to the definition of Disability set forth below), it may give to the Executive written notice in accordance with Section 12(b) of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by the Executive (the "DISABILITY EFFECTIVE DATE"), provided that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties. For purposes of this Agreement, "DISABILITY" shall mean the absence of the Executive from the Executive's full-time duties with the Company for 180 consecutive calendar days as a result of incapacity due to mental or physical illness that is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative (such agreement as to acceptability not to be withheld unreasonably).

(b) Cause. The Company may terminate the Executive's employment during the Employment Period for Cause. For purposes of this Agreement, "CAUSE" shall be determined by the Committee in exercise of good faith and reasonable judgment and shall mean (i) a material violation of Company policy or a material breach by the Executive of the

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Executive's obligations under Section 4(a) (other than as a result of incapacity due to physical or mental illness) that is demonstrably willful and deliberate on the Executive's part, committed in bad faith or without reasonable belief that the action or inaction that constitutes such breach is in the best interests of the Company, and, if subject to being effectively remedied, is not

remedied in a reasonable period of time after receipt of written notice from the Company specifying such breach or violation ("NOTE OF BREACH"); or (ii) the conviction of the Executive of a felony involving moral turpitude.

If Company delivers a Notice of Breach to Executive describing the situation to be remedied and Executive fails to remedy such violation or breach within a reasonable period of time (as determined in the Notice of Breach), a Notice of Termination delivered to the Executive subsequent to the Notice of Breach shall become effective retroactively back to the date of delivery of the Notice of Breach to the Executive.

(c) Good Reason. The Executive's employment may be terminated during the Employment Period by the Executive for Good Reason. For purposes of this Agreement, "GOOD REASON" shall mean, without the Executive's express written consent, the occurrence of any one or more of the following:

(i) the assignment to the Executive of any duties, authority or responsibilities materially inconsistent with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities with the most significant of those held, exercised or assigned at any time during the 90-day period immediately preceding the Effective Date (excluding those duties that are only for the purpose of effecting the Change of Control) or any other action by the Company that results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated action that is insubstantial or inadvertent and that is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(ii) any failure by the Company to comply with any of the provisions of Section 4(b), other than an isolated failure that is insubstantial or inadvertent failure and that is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(iii) the Company's requiring the Executive to be based at any office or location other than that described in Section 4(a)(i)(B);

(iv) any purported termination by the Company of the Executive's employment otherwise than as expressly permitted by this Agreement;

(v) any failure by the Company to obtain a satisfactory agreement from any successor to the Company to assume and agree to perform the Company's obligations under this Agreement, as contemplated in Section 11(c) herein;

(vi) the Company requiring the Executive to engage in excessive travel in comparison to travel required during the 90-day period immediately preceding the Effective Date; or

Executive Retention Agreement

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(vii) a substantial change in organizational reporting relationships as compared to the 90-day period immediately preceding the Effective Date that will have a significant impact on the status, offices, titles and reporting requirements of the Executive.

The Executive's continued employment shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason.

(d) Notice of Termination. Any termination by the Company for Cause, or by the Executive for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 12(b). For purposes of this Agreement, a "NOTICE OF TERMINATION" means a written notice that (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date of such notice. The failure by the Executive or the Company



to set forth in the Notice of Termination any fact or circumstance that supports a showing of Good Reason or Cause shall not waive any right of the Executive or the Company hereunder or preclude the Executive or the Company from later asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder. The Company may not terminate the Executive's employment for Cause after the Executive has delivered a Notice of Termination for Good Reason; nor may the Executive terminate employment with Company for Good Reason after Company has delivered a Notice of Termination to the Executive.

(e) Date of Termination. "DATE OF TERMINATION" means (i) if the Executive's employment is terminated by the Company for Cause or by the Executive for Good Reason, the date of receipt of the Notice of Termination or any later date specified therein, as the case may be; (ii) if the Executive's employment is terminated by the Company other than for Cause or Disability, the date on which the Company notifies the Executive of such termination; and (iii) if the Executive's employment is terminated by reason of death or Disability, the date of death of the Executive or the Disability Effective Date, as the case may be.

#### 6. Obligations of the Company upon Termination.

(a) Good Reason; Other than for Cause, Death or Disability. If, during the Employment Period, the Company shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) The Company shall pay to the Executive in a lump sum in cash within 30 days after the Date of Termination the aggregate of the following amounts:

#### Executive Retention Agreement

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A. The sum of (1) the Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid, (2) the product of (x) the Annual Bonus and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 and (3) any compensation previously deferred by the Executive (together with any accrued interest or earnings thereon) and any accrued vacation pay, in each case to the extent not theretofore paid (the sum of the amounts described in clauses (1), (2) and (3) shall be hereinafter referred to as the "ACCRUED OBLIGATIONS"); and

B. The amount (such amount shall be hereinafter referred to as the "SEVERANCE AMOUNT") equal to two (2) times the sum of (x) the Executive's Annual Base Salary and (y) the Annual Bonus; provided, however, that such amount shall be reduced by the present value (determined as provided in Section 280G(d)(4) of the Internal Revenue Code of 1986, as amended (the "CODE")) of any other amount of severance relating to salary or bonus continuation to be received by the Executive upon termination of employment of the Executive under any severance plan, policy or arrangement of the Company; and

C. A separate lump-sum supplemental retirement benefit (the amount of such benefit shall be hereinafter referred to as the "SUPPLEMENTAL RETIREMENT AMOUNT") equal to the difference between (1) the amount payable under any Company retirement plan (or any successor plan thereto) (the "RETIREMENT PLAN"), of which the Executive was a participant, and any supplemental and/or excess retirement plan of the Company and its affiliated companies providing benefits for the Executive (the "SERP") that the Executive would receive if the Executive's employment continued at the compensation level provided for in Sections 4(b)(i) and 4(b)(ii) for the remainder of the Employment Period plus two (2) years, assuming for this purpose that all accrued benefits are fully vested, and (2) the Executive's actual benefit (paid or payable), if any, under the Retirement Plan and the SERP; and

(ii) For the remainder of the Employment Period plus two (2)

years, or such longer period as any plan, program, practice or policy may provide, the Company shall continue benefits (or pay the pre-tax economic equivalent) to the Executive and/or the Executive's family at least equal to those which would have been provided to them in accordance with the plans, programs, practices and policies described in Sections 4(b)(v) and 4(b)(vii) if the Executive's employment had not been terminated in accordance with the most favorable plans, practices, programs or policies of the Company and its affiliated companies as in effect and applicable generally to other peer executives and their families during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies and their families, provided, however, that if the Executive becomes reemployed with another employer and is eligible to receive medical or other welfare benefits under another employer provided plan, the medical and other welfare benefits described herein shall be secondary to those provided under such other plan during such applicable period of eligibility (such continuation of such benefits for the applicable period

#### Executive Retention Agreement

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herein set forth shall be hereinafter referred to as "WELFARE BENEFIT CONTINUATION". For purposes of determining eligibility of the Executive for retiree benefits pursuant to such plans, practices, programs and policies, the Executive shall be considered to have remained employed until the end of the Employment Period and to have retired on the last day of such period; and

(iii) To the extent not theretofore paid or provided, for the remainder of the Employment Period plus two (2) years, or such longer period as any plan, program, practice or policy may provide, the Company shall timely pay or provide to the Executive and/or the Executive's family any other amounts or benefits (or the pre-tax economic equivalent) required to be paid or provided or which the Executive and/or the Executive's family is eligible to receive pursuant to this Agreement and under any plan, program, policy or practice or contract or agreement of the Company and its affiliated companies as in effect and applicable generally to other peer executives of the Company and its affiliated companies and their families during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally thereafter with respect to other peer executives of the Company and its affiliated companies and their families (such other amounts and benefits shall be hereinafter referred to as the "OTHER BENEFITS").

(b) Death. If the Executive's employment is terminated by reason of the Executive's death during, the Employment Period, this Agreement shall terminate without further obligations to the Executive's legal representatives under this Agreement, other than for (i) payment of Accrued Obligations (which shall be paid to the Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination) and the timely payment or provision of the Welfare Benefit Continuation and Other Benefits (excluding, in each case, Death Benefits (as defined below)) and (ii) payment to the Executive's estate or beneficiary, as applicable, in a lump-sum in cash within 30 days of the Date of Termination of an amount equal to (A) the sum of the Severance Amount and the Supplemental Retirement Amount reduced, but not below zero, by (B) the present value (determined as provided in Section 280G(d)(4) of the Code) of any cash amount to be received by the Executive or the Executive's family as a death benefit pursuant to the terms of any plan, policy or arrangement of the Company and its affiliated companies, but not including any proceeds of life insurance covering the Executive to the extent paid for directly or on a contributory basis by the Executive (which shall be paid in any event as an Other Benefit) (the benefits included in this clause (B) shall be hereinafter referred to as the "DEATH BENEFITS").

(c) Disability. If the Executive's employment is terminated by reason of the Executive's Disability during the Employment Period, this Agreement shall terminate without further obligations to the Executive, other than for (i) payment of Accrued Obligations (which shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination) and

the timely payment of provision of the Welfare Benefit Continuation and Other Benefits (excluding, in each case, Disability Benefits, as defined below) and (ii) payment to the Executive in a lump sum in cash within 30 days of the Date of Termination of an amount equal to (A) the sum of the Severance Amount and the Supplemental Retirement Amount reduced, but not below zero, by (B) the present value (determined as provided in Section 280G(d)(4) of

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the Code) of any cash amount to be received by the Executive as a disability benefit pursuant to the terms of any plan, policy or arrangement of the Company and its affiliated companies, but not including any proceeds of disability insurance covering the Executive to the extent paid for directly or on a contributory basis by the Executive (which shall be paid in any event as an Other Benefit) (the benefits included in this clause (B) shall be hereinafter referred to as the "DISABILITY BENEFITS").

(d) Cause; Other than for Good Reason. If the Executive's employment shall be terminated for Cause during the Employment Period, this Agreement shall terminate without further obligations to the Executive other than the obligation to pay to the Executive Annual Base Salary through the Date of Termination plus the amount of any compensation previously deferred by the Executive, in each case to the extent theretofore unpaid. If the Executive terminates employment during the Employment Period, excluding a termination for Good Reason, this Agreement shall terminate without further obligations to the Executive, other than for Accrued Obligations and the timely payment or provision of Other Benefits. In such case, all Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination.

7. Non-exclusivity of Rights. Except as provided in Sections 6(a)(ii), 6(b) and 6(c), nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its affiliated companies and for which the Executive may qualify, nor shall anything herein limit or otherwise affect such rights as the Executive may have under any contract or agreement with the Company or any of its affiliated companies. Amounts that are vested benefits or that the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its affiliated companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

#### 8. Full Settlement; Resolution of Disputes.

(a) The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Executive or others. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement and, except as provided in Section 6(a)(ii), such amounts shall not be reduced if the Executive obtains other employment.

(b) Parties recognize that there may be disputes between them as to whether the circumstances of the Executive's termination are covered by Section 6(a), (b) or (c) as the Executive and/or the Executive's family may contend or are covered by Section 6(d) as Company may contend. In the event of such a dispute, there may be a need for a binding ruling by a neutral decision maker. In such an event, the following shall apply:

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(i) If the Executive delivers a Notice of Termination to Company based on Section 6(a), (b) or (c), Company must pay the benefits provided in Section 6 unless Company commences arbitration to resolve the dispute within 30 days of the receipt of a Notice of Termination by the Executive. Failure to commence arbitration within the time stated is deemed an admission by Company of the Executive's reason for termination.

(ii) If Company delivers a Notice of Termination based on Section 6(d), Executive and/or Executive's family must commence arbitration to dispute the terms of such termination. Failure to commence arbitration within 60 days of the receipt of a Notice of Termination from Company is deemed an admission by the Executive of termination pursuant to Section 6(d).

(iii) Arbitration shall be conducted before a panel of three (3) arbitrators sitting in a location selected by the Executive within fifty (50) miles from the location of his job with the Company, in accordance with the rules of the American Arbitration Association then in effect. One arbitrator shall be selected by the Company. One arbitrator shall be selected by the Executive. The third arbitrator shall be selected by the two arbitrators selected by the Company and the Executive. Judgment may be entered on the award of the arbitrators in any court having proper jurisdiction, and such shall constitute the final, nonappealable decision.

(iv) Company agrees to pay promptly as incurred, to the full extent permitted by law, all legal fees and expenses that the Executive may reasonably incur as a result of any contest by the Company, the Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of any contest by the Executive about the amount of any payment pursuant to this Agreement), including all costs of arbitration, plus in each case interest on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Code.

(v) During the pendency of a dispute resolution, Company shall proceed to pay Annual Base Salary and Annual Bonus (referred to collectively as "CONTINUATION BENEFITS") to the Executive and/or the Executive's family or other beneficiaries, as the case may be, as though no such termination had occurred.

(A) If it is determined that the Executive's contention that Section 6(a), (b) or (c) was applicable, no portion of the Continuation Benefits will be recoverable by Company, nor shall any portion of such be credited towards the benefits due (per Section 6) to the Executive. If such a contention is not sustained by the arbitration panel, all Continuation Benefits are recoverable by Company, plus interest at the rate of interest that Company could have earned on amounts paid for such Continuation Benefits.

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(B) If it is determined that Company's contention that Section 6(d) was applicable is found to be incorrect, none of the Continuation Benefits shall be credited to the benefits due (per Section 6) to the Executive. If, however, Company's contention that Section 6(d) was applicable is found to be correct, all amounts paid by Company as Continuation Benefits shall be recoverable from Executive plus interest at the rate of interest that Company could have earned on the amounts paid for such Continuation Benefits.

(C) If the Executive does not make payment of the Continuation Benefits and accrued interest due to Company within 60 days following the resolution of the dispute for any amounts recoverable by Company, interest (on the total amount due) shall be due at the lesser of:

- (1) The rate published as the Prime Rate in the Wall Street Journal plus one percentage point on the date of receipt of the Notice of Termination; or
- (2) The maximum amount of interest allowed by law.

(D) If the Company does not pay any amount due to the Executive hereunder within the time provided, then in addition to such amount, Company shall pay Executive an amount of interest (on the total amount due) at the lesser of:

- (1) The rate published as the Prime Rate in the Wall Street Journal plus one percentage point on the date such payment is due; or
- (2) The maximum amount of interest allowed by law.

#### 9. Limitation on Termination Payment.

(a) Determination of Termination Payment Limit. Notwithstanding any other provision of this Agreement, if any portion of the Severance Amount or any other payment under this Agreement, or under any other agreement with or plan of the Company (in the aggregate "TOTAL PAYMENTS") would constitute an Excess Parachute Payment, then the payments to be made to the Executive under this Agreement shall be reduced such that the value of the aggregate Total Payments that the Executive is entitled to receive shall be one dollar (\$1) less than the maximum amount which the Executive may receive without becoming subject to the tax imposed by Section 4999 of the Code, or which the Company may pay without loss of deduction under Section 280G(a) of the Code. However, the payments to be made to the Executive under this Agreement shall be reduced if and only if so reducing the payments results in the Executive receiving a greater net Severance Amount than he would have received had a reduction not occurred and an excise tax been paid pursuant to Code Section 4999. For purposes of this Agreement, the terms "EXCESS PARACHUTE PAYMENT" and "PARACHUTE PAYMENTS" shall have the meanings assigned to them in Section 280G of the Code, and such Parachute Payments shall be valued as provided therein.

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(b) Procedure for Establishing Limitation on Termination Payment. Within sixty (60) days following delivery of the Notice of Termination or notice by the Company to the Executive of its belief that there is a payment or benefit due the Executive which will result in an "Excess Parachute Payment", the Executive and the Company, at the Company's expense, shall obtain the opinion of such legal counsel, which need not be unqualified, as the Executive may choose, which sets forth: (i) the amount of the Executive's "Annualized Includible Compensation For The Base Period" (as defined in Code Section 280G(d)(1)); (ii) the present value of the Total Payments; and (iii) the amount and present value of any Excess Parachute Payment. The opinion of such legal counsel may be supported by the opinion of a certified public accounting firm and, if necessary, a firm of recognized executive compensation consultants. Such opinion shall be binding upon the Company and the Executive. In the event that such opinion determines that there would be an Excess Parachute Payment, the Severance Amount hereunder or any other payment determined by such counsel to be includible in Total Payments shall be reduced or eliminated so that under the basis of calculations set forth in such opinion, there will be no Excess Parachute Payment. The provisions of this Section 9(b), including the calculations, notices, and opinion provided for herein shall be based upon the conclusive presumption that: (i) the compensation and benefits provided for herein; and (ii) any other compensation earned prior to the Effective Date of termination by the Executive pursuant to the Company's compensation programs (if

such payments would have been made in the future in any event, even though the timing of such payment is triggered by the Change-of-Control), are reasonable.

(c) Subsequent Imposition of Excise Tax. If, notwithstanding compliance with the provisions of Sections 9(a), and 9(b) herein, it is ultimately determined by a court or pursuant to a final determination by the Internal Revenue Service that any portion of the Total Payments is considered to be a Parachute Payment, subject to excise tax under Section 4999 of the Code, which was not contemplated to be a Parachute Payment at the time of payment (so as to accurately determine whether a limitation benefit to the Executive, as provided in Section 9(b) hereof), the Executive shall be entitled to receive a lump sum cash payment sufficient to place the Executive in the same net after-tax position, computed by using the Special Tax Rate (as such term is defined below), that the Executive would have been in had such payment not been subject to such excise tax, and had the Executive not incurred any interest charges or penalties with respect to the imposition of such excise tax. For purposes of this Agreement, the "SPECIAL TAX RATE" shall be the highest effective federal and state marginal tax rates applicable to the Executive in the year in which the payment contemplated under this Section 9 is made.

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10. Confidential Information. The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its affiliated companies, and their respective businesses, which shall have been obtained by the Executive during the Executive's employment by the Company or any of its affiliated companies and which shall not be or have become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those designated by it. In no event shall an asserted violation of the provisions of this Section 10 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

#### 11. Successors.

(a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "COMPANY" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid that assumes and agrees to perform this Agreement by operation of law, or otherwise.

(d) Failure of the Company to obtain such assumption and agreement prior to the effective date of any such succession shall be a breach of this Agreement and shall entitle the Executive to compensation from the Company in the same amount and on the same terms as the Executive would be entitled to hereunder if he had terminated his employment with the Company voluntarily for Good Reason. For the purpose of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Date of Termination.

12. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

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(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:

Charles Michel  
6205 Highview  
Plano, TX 75024

If to the Company:

Dave & Buster's, Inc.  
2481 Manana Drive  
Dallas, TX 75220  
Attention: General Counsel

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such Federal, state or local taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Executive's or the Company's failure to insist upon strict compliance with any provision hereof or any other provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment for Good Reason pursuant to Section 5(c)(i)-(v), shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(f) The Executive and the Company acknowledge that, except as may otherwise be provided under any other written agreement between the Executive and the Company, the employment of the Executive by the Company prior to the Effective Date is "at will" and may be terminated by either the Executive or the Company at any time. If prior to the Effective Date, the Executive's employment with the Company terminates, the Executive shall have no further rights and obligations under this Agreement.

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(g) No provision of this Agreement may be modified, waived, or discharged unless such modification, waiver, or discharge is agreed to in writing and signed by the Executive and by an authorized member of the Committee, or by the respective parties' legal representatives and successors.

(h) The Company and Wachovia Bank of North Carolina, N.A., as Trustee have previously executed the Dave & Buster's, Inc. Executive Retention Agreement Trust dated April 3, 2000. The Company covenants with Executive to: (i) identify Executive as a Plan Participant thereunder by amending Attachment 1 thereto; and (ii) make all payments required of the Company pursuant to such agreement.

IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from its Committee, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

/s/ Charles Michel

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Charles Michel

Dave & Buster's, Inc.

By: /s/ David O. Corriveau

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Its: President  
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Executive Retention Agreement



## EXECUTIVE RETENTION AGREEMENT

AGREEMENT by and between Dave & Buster's, Inc. (the "COMPANY"), and Sterling R. Smith (the "EXECUTIVE"), dated as of the 11th day of June, 2001.

The Compensation Committee of the Company, (the "COMMITTEE"), has determined that it is in the best interests of the Company and its owners to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined in Section 2) of Dave & Buster's, Inc. (the "CORPORATION"). The Committee believes it is imperative to minimize distraction of the Executive resulting from personal uncertainties and risks created by a pending or threatened Change of Control, to encourage the Executive's full attention and dedication to the Company currently and in the event of any threatened or pending Change of Control, and to provide the Executive with compensation and benefits arrangements upon a Change of Control that satisfy the compensation and benefits expectations of the Executive and are competitive with those of other corporations. Therefore, in order to accomplish these objectives, the Committee has caused the Company to enter into this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Certain Definitions.

(a) The "EFFECTIVE DATE" shall mean the first date during the Change of Control Period (as defined in Section 1(b)) on which a Change of Control occurs. Anything in this Agreement to the contrary notwithstanding, if a Change of Control occurs and if the Executive's employment with the Company is terminated by the Company within ninety (90) days prior to the date on which the Change of Control occurs, then for all purposes of this Agreement the "EFFECTIVE DATE" shall mean the date immediately prior to the date of such termination of employment.

(b) The "CHANGE OF CONTROL PERIOD" shall mean the period commencing on the date hereof and ending on the third anniversary of such date; provided, however, that commencing on the date one year after the date hereof, 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 Change of Control Period shall be automatically extended so as to terminate three years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company shall give notice to the Executive that the Change of Control Period shall not be so extended.

2. Control. For the purpose of this Agreement, a "CHANGE OF CONTROL" shall mean:

(a) Acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the

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"EXCHANGE ACT")) (a "PERSON") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 30% or more of either (i) the then outstanding shares of common stock of the Corporation (the "OUTSTANDING COMMON STOCK") or (ii) the combined voting power of the then outstanding voting securities of the Corporation entitled to vote generally in the election of its directors (the "OUTSTANDING VOTING SECURITIES"); provided, however, that the following acquisitions shall not constitute a Change of Control: (i) any acquisition directly from the Corporation (excluding an acquisition by virtue of

the exercise of a conversion privilege), (ii) any acquisition by the Corporation, (iii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Corporation or any corporation controlled by the Corporation or (iv) any acquisition by any corporation pursuant to a reorganization, merger or consolidation, if, following such reorganization, merger or consolidation, the conditions described in clauses (i), (ii) and (iii) of subsection (c) of this Section 2 are satisfied; or

(b) Individuals who, as of the date hereof, constitute the Board of Directors of the Corporation (the "INCUMBENT BOARD") cease for any reason to constitute at least a majority of the Board of Directors said Corporation (the "BOARD"); provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Corporation's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14.A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(c) Approval by the shareholders of the Corporation of a reorganization, merger or consolidation, in each case, unless, following such reorganization, merger or consolidation, (i) more than 50% of the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation and more than 50% of the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Common Stock and Outstanding Voting Securities immediately prior to such reorganization, merger or consolidation in substantially the same proportions as their ownership immediately prior to such reorganization, merger or consolidation, of the Outstanding Common Stock and Outstanding Voting Securities, as the case may be; (ii) no Person (excluding the Corporation, any employee benefit plan (or related trust) of the Corporation or such corporation resulting from such reorganization, merger or consolidation and any Person beneficially owning, immediately prior to such reorganization, merger or consolidation, directly or indirectly, 30% or more of the Outstanding Common Stock or Outstanding Voting Securities, as the case may be) beneficially owns, directly or indirectly, 30% or more of the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation or the combined voting power of

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the then outstanding voting securities of such corporation entitled to vote generally in the election of directors; and (iii) at least a majority of the members of the board of directors of the corporation resulting from such reorganization, merger or consolidation were members of the Incumbent Board at the time of the execution of the initial agreement providing for such reorganization, merger or consolidation; or

(d) Approval by the shareholders of the Corporation of (i) a complete liquidation or dissolution of the Corporation or (ii) the sale or other disposition of all or substantially all of the assets of the Corporation, other than to a corporation with respect to which, following such sale or other disposition, (A) more than 50% of the then outstanding shares of common stock of such corporation and more than 50% of the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Common Stock and Outstanding Voting Securities immediately prior to such sale or other disposition in substantially the same proportion as their ownership immediately prior to such sale or other disposition of the Outstanding Common Stock or Outstanding Voting Securities, as

the case may be; (B) no Person (excluding the Corporation and any employee benefit plan (or related trust) of the Corporation or such corporation and any Person beneficially owning, immediately prior to such sale or other disposition, directly or indirectly, 30% or more of the Outstanding Common Stock or Outstanding Voting Securities, as the case may be) beneficially owns, directly or indirectly, 30% or more of the then outstanding shares of common stock of such corporation or 30% or more of the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors; and (C) at least a majority of the members of the board of directors of such corporation were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board providing for such sale or other disposition of assets of the Corporation.

A "Change of Control" will not include any transaction otherwise covered by subsections (a) through (d) above in which beneficial ownership of the Outstanding Common Stock is acquired by, or the Corporation is merged or consolidated with an affiliate of, a "group" (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) in which David O. Corriveau and James W. Corley are named participants in a Form 13E-3 (or any successor form) filed with the Securities and Exchange Commission and remain as executive officers and directors of the Corporation or its successor after the completion of such transaction.

3. Employment Period. The Company hereby agrees to continue the Executive in its employ, and the Executive hereby agrees to remain in the employ of the Company, in accordance with the terms and provisions of this Agreement, for the period commencing on the Effective Date and ending on the second anniversary of such date (the "EMPLOYMENT PERIOD"). Employment by one or more of the affiliated companies, as hereinafter defined, shall be considered employment by the Company.

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#### 4. Terms of Employment.

##### (a) Position and Duties.

(i) During the Employment Period, (A) the Executive's position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be consistent in all material respects with the most significant of those held, exercised or assigned at any time during the 90-day period immediately preceding the Effective Date and (B) the Executive's services shall be performed at the location where the Executive was employed immediately preceding the Effective Date or any office that is the headquarters of the Company and is less than 25 miles from such location.

(ii) During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement for the Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of the Executive's responsibilities to the Company. It is expressly understood and agreed that to the extent that any such activities have been conducted by the Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not hereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company.

##### (b) Compensation.

(i) Base Salary. During the Employment period, the Executive shall receive an annual base salary ("ANNUAL BASE SALARY"), which shall be paid in equal installments on a monthly basis, at least equal to twelve times the highest monthly base salary paid or payable to the Executive by the Company and its affiliated companies during the twelve-month period immediately preceding the month in which the Effective Date occurs. During the Employment Period, the Annual Base Salary shall be reviewed at least annually and shall be increased at any time and from time to time as shall be substantially consistent with increases in base salary generally awarded in the ordinary course of business to other peer executives of the Company and its affiliated companies. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased. As used in this Agreement, the term "AFFILIATED COMPANIES" shall include any company controlled by, controlling or under common control with the Company.

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(ii) Annual Bonus. In addition to Annual Base Salary, the Executive shall be awarded, for each fiscal year ending during the Employment Period, an annual bonus (the "ANNUAL BONUS") in cash at least equal to the greater of: (a) the maximum bonus that the Executive could have been paid pursuant to the executive incentive bonus plan in effect ninety (90) days prior to the Effective Date and (b) sixty percent (60%) of the Annual Base Salary then in effect. Each such Annual Bonus shall be paid no later than the end of the third month of the fiscal year next following the fiscal year for which the Annual Bonus is awarded, unless the Executive shall elect to defer the receipt of such Annual Bonus.

(iii) Incentive, Savings and Retirement Plans. During the Employment Period, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies and programs applicable generally to other peer executives of the Company and its affiliated companies. Such plans, practices, policies and programs shall provide the Executive with incentive opportunities (measured with respect to both regular and special incentive opportunities, if any), savings opportunities and retirement benefit opportunities, in each case, as favorable as the most favorable of those provided by the Company and its affiliated companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(iv) Welfare Benefit Plans. During the Employment Period, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, salary continuance, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent applicable generally to other peer executives of the Company and its affiliated companies. Such plans, practices, policies and programs shall provide the Executive with benefits that are, in each case, as favorable, as the most favorable of such plans, practices, policies and programs in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(v) Expenses. During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable employment expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and its affiliated companies

in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

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(vi) Fringe Benefits. During the Employment Period, the Executive shall be entitled to fringe benefits in accordance with the most favorable plans, practices, programs and policies of the Company and its affiliated companies in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date, or if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vii) Office and Support Staff. During the Employment Period, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to exclusive personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to the Executive by the Company or its affiliated companies at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(viii) Vacation. During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the most favorable plans, policies, programs and practices of the Company and its affiliated companies as in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

#### 5. Termination of Employment.

(a) Death or Disability. The Executive's employment shall terminate automatically upon the Executive's death during the Employment Period. If the Company determines in good faith that the Disability of the Executive has occurred during the Employment Period (pursuant to the definition of Disability set forth below), it may give to the Executive written notice in accordance with Section 12(b) of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by the Executive (the "DISABILITY EFFECTIVE DATE"), provided that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties. For purposes of this Agreement, "DISABILITY" shall mean the absence of the Executive from the Executive's full-time duties with the Company for 180 consecutive calendar days as a result of incapacity due to mental or physical illness that is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative (such agreement as to acceptability not to be withheld unreasonably).

(b) Cause. The Company may terminate the Executive's employment during the Employment Period for Cause. For purposes of this Agreement, "CAUSE" shall be determined by the Committee in exercise of good faith and reasonable judgment and shall mean (i) a material violation of Company policy or a material breach by the Executive of the

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Executive's obligations under Section 4(a) (other than as a result of incapacity due to physical or mental illness) that is demonstrably willful and deliberate on the Executive's part, committed in bad faith or without reasonable belief that the action or inaction that constitutes such breach is in the best interests of the Company, and, if subject to being effectively remedied, is not remedied in a reasonable period of time after receipt of written notice from the Company specifying such breach or violation ("NOTE OF BREACH"); or (ii) the conviction of the Executive of a felony involving moral turpitude.

If Company delivers a Notice of Breach to Executive describing the situation to be remedied and Executive fails to remedy such violation or breach within a reasonable period of time (as determined in the Notice of Breach), a Notice of Termination delivered to the Executive subsequent to the Notice of Breach shall become effective retroactively back to the date of delivery of the Notice of Breach to the Executive.

(c) Good Reason. The Executive's employment may be terminated during the Employment Period by the Executive for Good Reason. For purposes of this Agreement, "GOOD REASON" shall mean, without the Executive's express written consent, the occurrence of any one or more of the following:

(i) the assignment to the Executive of any duties, authority or responsibilities materially inconsistent with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities with the most significant of those held, exercised or assigned at any time during the 90-day period immediately preceding the Effective Date (excluding those duties that are only for the purpose of effecting the Change of Control) or any other action by the Company that results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated action that is insubstantial or inadvertent and that is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(ii) any failure by the Company to comply with any of the provisions of Section 4(b), other than an isolated failure that is insubstantial or inadvertent failure and that is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(iii) the Company's requiring the Executive to be based at any office or location other than that described in Section 4(a)(i)(B);

(iv) any purported termination by the Company of the Executive's employment otherwise than as expressly permitted by this Agreement;

(v) any failure by the Company to obtain a satisfactory agreement from any successor to the Company to assume and agree to perform the Company's obligations under this Agreement, as contemplated in Section 11(c) herein;

(vi) the Company requiring the Executive to engage in excessive travel in comparison to travel required during the 90-day period immediately preceding the Effective Date; or

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(vii) a substantial change in organizational reporting relationships as compared to the 90-day period immediately preceding the Effective Date that will have a significant impact on the status, offices, titles and reporting requirements of the Executive.

The Executive's continued employment shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason.

(d) Notice of Termination. Any termination by the Company for Cause, or by the Executive for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 12(b). For purposes of this Agreement, a "NOTICE OF TERMINATION" means a written notice that (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date of such notice. The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance that supports a showing of Good Reason or Cause shall not waive any right of the Executive or the Company hereunder or preclude the Executive or the Company from later asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder. The Company may not terminate the Executive's employment for Cause after the Executive has delivered a Notice of Termination for Good Reason; nor may the Executive terminate employment with Company for Good Reason after Company has delivered a Notice of Termination to the Executive.

(e) Date of Termination. "DATE OF TERMINATION" means (i) if the Executive's employment is terminated by the Company for Cause or by the Executive for Good Reason, the date of receipt of the Notice of Termination or any later date specified therein, as the case may be; (ii) if the Executive's employment is terminated by the Company other than for Cause or Disability, the date on which the Company notifies the Executive of such termination; and (iii) if the Executive's employment is terminated by reason of death or Disability, the date of death of the Executive or the Disability Effective Date, as the case may be.

#### 6. Obligations of the Company upon Termination.

(a) Good Reason; Other than for Cause, Death or Disability. If, during the Employment Period, the Company shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) The Company shall pay to the Executive in a lump sum in cash within 30 days after the Date of Termination the aggregate of the following amounts:

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A. The sum of (1) the Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid, (2) the product of (x) the Annual Bonus and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 and (3) any compensation previously deferred by the Executive (together with any accrued interest or earnings thereon) and any accrued vacation pay, in each case to the extent not theretofore paid (the sum of the amounts described in clauses (1), (2) and (3) shall be hereinafter referred to as the "ACCRUED OBLIGATIONS"); and

B. The amount (such amount shall be hereinafter referred to as the "SEVERANCE AMOUNT") equal to two (2) times the sum of (x) the Executive's Annual Base Salary and (y) the Annual Bonus; provided, however, that such amount shall be reduced by the present value (determined as provided in Section 280G(d)(4) of the Internal Revenue Code of 1986, as amended (the "CODE")) of any other amount of severance relating to salary or bonus continuation to be received by the Executive upon termination of employment of the Executive under any severance plan, policy or arrangement of the Company; and

C. A separate lump-sum supplemental retirement benefit (the amount of such benefit shall be hereinafter referred to as the "SUPPLEMENTAL RETIREMENT AMOUNT") equal to the difference between (1) the amount payable under

any Company retirement plan (or any successor plan thereto) (the "RETIREMENT PLAN"), of which the Executive was a participant, and any supplemental and/or excess retirement plan of the Company and its affiliated companies providing benefits for the Executive (the "SERP") that the Executive would receive if the Executive's employment continued at the compensation level provided for in Sections 4(b)(i) and 4(b)(ii) for the remainder of the Employment Period plus two (2) years, assuming for this purpose that all accrued benefits are fully vested, and (2) the Executive's actual benefit (paid or payable), if any, under the Retirement Plan and the SERP; and

(ii) For the remainder of the Employment Period plus two (2) years, or such longer period as any plan, program, practice or policy may provide, the Company shall continue benefits (or pay the pre-tax economic equivalent) to the Executive and/or the Executive's family at least equal to those which would have been provided to them in accordance with the plans, programs, practices and policies described in Sections 4(b)(v) and 4(b)(vii) if the Executive's employment had not been terminated in accordance with the most favorable plans, practices, programs or policies of the Company and its affiliated companies as in effect and applicable generally to other peer executives and their families during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies and their families, provided, however, that if the Executive becomes reemployed with another employer and is eligible to receive medical or other welfare benefits under another employer provided plan, the medical and other welfare benefits described herein shall be secondary to those provided under such other plan during such applicable period of eligibility (such continuation of such benefits for the applicable period

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herein set forth shall be hereinafter referred to as "WELFARE BENEFIT CONTINUATION". For purposes of determining eligibility of the Executive for retiree benefits pursuant to such plans, practices, programs and policies, the Executive shall be considered to have remained employed until the end of the Employment Period and to have retired on the last day of such period; and

(iii) To the extent not theretofore paid or provided, for the remainder of the Employment Period plus two (2) years, or such longer period as any plan, program, practice or policy may provide, the Company shall timely pay or provide to the Executive and/or the Executive's family any other amounts or benefits (or the pre-tax economic equivalent) required to be paid or provided or which the Executive and/or the Executive's family is eligible to receive pursuant to this Agreement and under any plan, program, policy or practice or contract or agreement of the Company and its affiliated companies as in effect and applicable generally to other peer executives of the Company and its affiliated companies and their families during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally thereafter with respect to other peer executives of the Company and its affiliated companies and their families (such other amounts and benefits shall be hereinafter referred to as the "OTHER BENEFITS").

(b) Death. If the Executive's employment is terminated by reason of the Executive's death during, the Employment Period, this Agreement shall terminate without further obligations to the Executive's legal representatives under this Agreement, other than for (i) payment of Accrued Obligations (which shall be paid to the Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination) and the timely payment or provision of the Welfare Benefit Continuation and Other Benefits (excluding, in each case, Death Benefits (as defined below)) and (ii) payment to the Executive's estate or beneficiary, as applicable, in a lump-sum in cash within 30 days of the Date of Termination of an amount equal to (A) the sum of the Severance Amount and the Supplemental Retirement Amount reduced, but not below zero, by (B) the present value (determined as provided in Section 280G(d)(4) of the Code) of any cash amount to be received by the Executive or the Executive's family as a death benefit pursuant to the terms of any plan, policy or



arrangement of the Company and its affiliated companies, but not including any proceeds of life insurance covering the Executive to the extent paid for directly or on a contributory basis by the Executive (which shall be paid in any event as an Other Benefit) (the benefits included in this clause (B) shall be hereinafter referred to as the "DEATH BENEFITS").

(c) Disability. If the Executive's employment is terminated by reason of the Executive's Disability during the Employment Period, this Agreement shall terminate without further obligations to the Executive, other than for (i) payment of Accrued Obligations (which shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination) and the timely payment of provision of the Welfare Benefit Continuation and Other Benefits (excluding, in each case, Disability Benefits, as defined below) and (ii) payment to the Executive in a lump sum in cash within 30 days of the Date of Termination of an amount equal to (A) the sum of the Severance Amount and the Supplemental Retirement Amount reduced, but not below zero, by (B) the present value (determined as provided in Section 280G(d)(4) of

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the Code) of any cash amount to be received by the Executive as a disability benefit pursuant to the terms of any plan, policy or arrangement of the Company and its affiliated companies, but not including any proceeds of disability insurance covering the Executive to the extent paid for directly or on a contributory basis by the Executive (which shall be paid in any event as an Other Benefit) (the benefits included in this clause (B) shall be hereinafter referred to as the "DISABILITY BENEFITS").

(d) Cause; Other than for Good Reason. If the Executive's employment shall be terminated for Cause during the Employment Period, this Agreement shall terminate without further obligations to the Executive other than the obligation to pay to the Executive Annual Base Salary through the Date of Termination plus the amount of any compensation previously deferred by the Executive, in each case to the extent theretofore unpaid. If the Executive terminates employment during the Employment Period, excluding a termination for Good Reason, this Agreement shall terminate without further obligations to the Executive, other than for Accrued Obligations and the timely payment or provision of Other Benefits. In such case, all Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination.

7. Non-exclusivity of Rights. Except as provided in Sections 6(a)(ii), 6(b) and 6(c), nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its affiliated companies and for which the Executive may qualify, nor shall anything herein limit or otherwise affect such rights as the Executive may have under any contract or agreement with the Company or any of its affiliated companies. Amounts that are vested benefits or that the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its affiliated companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

8. Full Settlement; Resolution of Disputes.

(a) The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Executive or others. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement and, except as provided in Section 6(a)(ii), such amounts shall not be reduced if the Executive obtains other employment.

(b) Parties recognize that there may be disputes between them as to whether the circumstances of the Executive's termination are covered by Section 6(a), (b) or (c) as the Executive and/or the Executive's family may contend or are covered by Section 6(d) as Company may contend. In the event of such a dispute, there may be a need for a binding ruling by a neutral decision maker. In such an event, the following shall apply:

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(i) If the Executive delivers a Notice of Termination to Company based on Section 6(a), (b) or (c), Company must pay the benefits provided in Section 6 unless Company commences arbitration to resolve the dispute within 30 days of the receipt of a Notice of Termination by the Executive. Failure to commence arbitration within the time stated is deemed an admission by Company of the Executive's reason for termination.

(ii) If Company delivers a Notice of Termination based on Section 6(d), Executive and/or Executive's family must commence arbitration to dispute the terms of such termination. Failure to commence arbitration within 60 days of the receipt of a Notice of Termination from Company is deemed an admission by the Executive of termination pursuant to Section 6(d).

(iii) Arbitration shall be conducted before a panel of three (3) arbitrators sitting in a location selected by the Executive within fifty (50) miles from the location of his job with the Company, in accordance with the rules of the American Arbitration Association then in effect. One arbitrator shall be selected by the Company. One arbitrator shall be selected by the Executive. The third arbitrator shall be selected by the two arbitrators selected by the Company and the Executive. Judgment may be entered on the award of the arbitrators in any court having proper jurisdiction, and such shall constitute the final, nonappealable decision.

(iv) Company agrees to pay promptly as incurred, to the full extent permitted by law, all legal fees and expenses that the Executive may reasonably incur as a result of any contest by the Company, the Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of any contest by the Executive about the amount of any payment pursuant to this Agreement), including all costs of arbitration, plus in each case interest on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Code.

(v) During the pendency of a dispute resolution, Company shall proceed to pay Annual Base Salary and Annual Bonus (referred to collectively as "CONTINUATION BENEFITS") to the Executive and/or the Executive's family or other beneficiaries, as the case may be, as though no such termination had occurred.

(A) If it is determined that the Executive's contention that Section 6(a), (b) or (c) was applicable, no portion of the Continuation Benefits will be recoverable by Company, nor shall any portion of such be credited towards the benefits due (per Section 6) to the Executive. If such a contention is not sustained by the arbitration panel, all Continuation Benefits are recoverable by Company, plus interest at the rate of interest that Company could have earned on amounts paid for such Continuation Benefits.

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(B) If it is determined that Company's contention that Section 6(d) was applicable is found to be incorrect, none of the Continuation Benefits shall be credited to the benefits due (per Section 6) to the Executive. If, however, Company's contention that Section 6(d) was applicable is found to be correct, all amounts paid by Company as Continuation Benefits shall be recoverable from Executive plus interest at the rate of interest that Company could have earned on the amounts paid for such Continuation Benefits.

(C) If the Executive does not make payment of the Continuation Benefits and accrued interest due to Company within 60 days following the resolution of the dispute for any amounts recoverable by Company, interest (on the total amount due) shall be due at the lesser of:

- (1) The rate published as the Prime Rate in the Wall Street Journal plus one percentage point on the date of receipt of the Notice of Termination; or
- (2) The maximum amount of interest allowed by law.

(D) If the Company does not pay any amount due to the Executive hereunder within the time provided, then in addition to such amount, Company shall pay Executive an amount of interest (on the total amount due) at the lesser of:

- (1) The rate published as the Prime Rate in the Wall Street Journal plus one percentage point on the date such payment is due; or
- (2) The maximum amount of interest allowed by law.

#### 9. Limitation on Termination Payment.

(a) Determination of Termination Payment Limit. Notwithstanding any other provision of this Agreement, if any portion of the Severance Amount or any other payment under this Agreement, or under any other agreement with or plan of the Company (in the aggregate "TOTAL PAYMENTS") would constitute an Excess Parachute Payment, then the payments to be made to the Executive under this Agreement shall be reduced such that the value of the aggregate Total Payments that the Executive is entitled to receive shall be one dollar (\$1) less than the maximum amount which the Executive may receive without becoming subject to the tax imposed by Section 4999 of the Code, or which the Company may pay without loss of deduction under Section 280G(a) of the Code. However, the payments to be made to the Executive under this Agreement shall be reduced if and only if so reducing the payments results in the Executive receiving a greater net Severance Amount than he would have received had a reduction not occurred and an excise tax been paid pursuant to Code Section 4999. For purposes of this Agreement, the terms "EXCESS PARACHUTE PAYMENT" and "PARACHUTE PAYMENTS" shall have the meanings assigned to them in Section 280G of the Code, and such Parachute Payments shall be valued as provided therein.

#### Executive Retention Agreement

(b) Procedure for Establishing Limitation on Termination Payment. Within sixty (60) days following delivery of the Notice of Termination or notice by the Company to the Executive of its belief that there is a payment or benefit due the Executive which will result in an "Excess Parachute Payment", the Executive and the Company, at the Company's expense, shall obtain the opinion of such legal counsel, which need not be unqualified, as the Executive may choose,

which sets forth: (i) the amount of the Executive's "Annualized Includible Compensation For The Base Period" (as defined in Code Section 280G(d)(1)); (ii) the present value of the Total Payments; and (iii) the amount and present value of any Excess Parachute Payment. The opinion of such legal counsel may be supported by the opinion of a certified public accounting firm and, if necessary, a firm of recognized executive compensation consultants. Such opinion shall be binding upon the Company and the Executive. In the event that such opinion determines that there would be an Excess Parachute Payment, the Severance Amount hereunder or any other payment determined by such counsel to be includible in Total Payments shall be reduced or eliminated so that under the basis of calculations set forth in such opinion, there will be no Excess Parachute Payment. The provisions of this Section 9(b), including the calculations, notices, and opinion provided for herein shall be based upon the conclusive presumption that: (i) the compensation and benefits provided for herein; and (ii) any other compensation earned prior to the Effective Date of termination by the Executive pursuant to the Company's compensation programs (if such payments would have been made in the future in any event, even though the timing of such payment is triggered by the Change-of-Control), are reasonable.

(c) Subsequent Imposition of Excise Tax. If, notwithstanding compliance with the provisions of Sections 9(a), and 9(b) herein, it is ultimately determined by a court or pursuant to a final determination by the Internal Revenue Service that any portion of the Total Payments is considered to be a Parachute Payment, subject to excise tax under Section 4999 of the Code, which was not contemplated to be a Parachute Payment at the time of payment (so as to accurately determine whether a limitation benefit to the Executive, as provided in Section 9(b) hereof), the Executive shall be entitled to receive a lump sum cash payment sufficient to place the Executive in the same net after-tax position, computed by using the Special Tax Rate (as such term is defined below), that the Executive would have been in had such payment not been subject to such excise tax, and had the Executive not incurred any interest charges or penalties with respect to the imposition of such excise tax. For purposes of this Agreement, the "SPECIAL TAX RATE" shall be the highest effective federal and state marginal tax rates applicable to the Executive in the year in which the payment contemplated under this Section 9 is made.

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10. Confidential Information. The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its affiliated companies, and their respective businesses, which shall have been obtained by the Executive during the Executive's employment by the Company or any of its affiliated companies and which shall not be or have become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those designated by it. In no event shall an asserted violation of the provisions of this Section 10 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

11. Successors.

(a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "COMPANY" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid that assumes and agrees to perform this Agreement by operation of law, or otherwise.

(d) Failure of the Company to obtain such assumption and agreement prior to the effective date of any such succession shall be a breach of this Agreement and shall entitle the Executive to compensation from the Company in the same amount and on the same terms as the Executive would be entitled to hereunder if he had terminated his employment with the Company voluntarily for Good Reason. For the purpose of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Date of Termination.

## 12. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

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(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:

Sterling R. Smith  
1303 Houston Ct.  
Southlake, TX 76092

If to the Company:

Dave & Buster's, Inc.  
2481 Manana Drive  
Dallas, TX 75220  
Attention: General Counsel

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such Federal, state or local taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Executive's or the Company's failure to insist upon strict compliance with any provision hereof or any other provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment for Good Reason pursuant to Section 5(c)(i)-(v), shall not be deemed to be a waiver of such provision or right or any other provision or

right of this Agreement.

(f) The Executive and the Company acknowledge that, except as may otherwise be provided under any other written agreement between the Executive and the Company, the employment of the Executive by the Company prior to the Effective Date is "at will" and may be terminated by either the Executive or the Company at any time. If prior to the Effective Date, the Executive's employment with the Company terminates, the Executive shall have no further rights and obligations under this Agreement.

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(g) No provision of this Agreement may be modified, waived, or discharged unless such modification, waiver, or discharge is agreed to in writing and signed by the Executive and by an authorized member of the Committee, or by the respective parties' legal representatives and successors.

(h) The Company and Wachovia Bank of North Carolina, N.A., as Trustee have previously executed the Dave & Buster's, Inc. Executive Retention Agreement Trust dated April 3, 2000. The Company covenants with Executive to: (i) identify Executive as a Plan Participant thereunder by amending Attachment 1 thereto; and (ii) make all payments required of the Company pursuant to such agreement.

IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from its Committee, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

/s/ Sterling R. Smith

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Sterling R. Smith

Dave & Buster's, Inc.

By: /s/ David O. Corriveau

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Its: President  
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## EXECUTIVE RETENTION AGREEMENT

AGREEMENT by and between Dave & Buster's, Inc. (the "COMPANY"), and Bryan L. Spain (the "EXECUTIVE"), dated as of the 8th day of June, 2001.

The Compensation Committee of the Company, (the "COMMITTEE"), has determined that it is in the best interests of the Company and its owners to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined in Section 2) of Dave & Buster's, Inc. (the "CORPORATION"). The Committee believes it is imperative to minimize distraction of the Executive resulting from personal uncertainties and risks created by a pending or threatened Change of Control, to encourage the Executive's full attention and dedication to the Company currently and in the event of any threatened or pending Change of Control, and to provide the Executive with compensation and benefits arrangements upon a Change of Control that satisfy the compensation and benefits expectations of the Executive and are competitive with those of other corporations. Therefore, in order to accomplish these objectives, the Committee has caused the Company to enter into this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Certain Definitions.

(a) The "EFFECTIVE DATE" shall mean the first date during the Change of Control Period (as defined in Section 1(b)) on which a Change of Control occurs. Anything in this Agreement to the contrary notwithstanding, if a Change of Control occurs and if the Executive's employment with the Company is terminated by the Company within ninety (90) days prior to the date on which the Change of Control occurs, then for all purposes of this Agreement the "EFFECTIVE DATE" shall mean the date immediately prior to the date of such termination of employment.

(b) The "CHANGE OF CONTROL PERIOD" shall mean the period commencing on the date hereof and ending on the third anniversary of such date; provided, however, that commencing on the date one year after the date hereof, 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 Change of Control Period shall be automatically extended so as to terminate three years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company shall give notice to the Executive that the Change of Control Period shall not be so extended.

2. Control. For the purpose of this Agreement, a "CHANGE OF CONTROL" shall mean:

(a) Acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended

(the "EXCHANGE ACT")) (a "PERSON") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 30% or more of either (i) the then outstanding shares of common stock of the Corporation (the "OUTSTANDING COMMON STOCK") or (ii) the combined voting power of the then outstanding voting securities of the Corporation entitled to vote generally in the election of its directors (the "OUTSTANDING VOTING SECURITIES"); provided, however, that the following acquisitions shall not constitute a Change of Control: (i) any acquisition directly from the Corporation (excluding an acquisition by virtue of the exercise of a conversion privilege), (ii) any acquisition by the Corporation, (iii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Corporation or any corporation controlled by the Corporation or (iv) any acquisition by any corporation pursuant to a

reorganization, merger or consolidation, if, following such reorganization, merger or consolidation, the conditions described in clauses (i), (ii) and (iii) of subsection (c) of this Section 2 are satisfied; or

(b) Individuals who, as of the date hereof, constitute the Board of Directors of the Corporation (the "INCUMBENT BOARD") cease for any reason to constitute at least a majority of the Board of Directors said Corporation (the "BOARD"); provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Corporation's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14.A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(c) Approval by the shareholders of the Corporation of a reorganization, merger or consolidation, in each case, unless, following such reorganization, merger or consolidation, (i) more than 50% of the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation and more than 50% of the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Common Stock and Outstanding Voting Securities immediately prior to such reorganization, merger or consolidation in substantially the same proportions as their ownership immediately prior to such reorganization, merger or consolidation, of the Outstanding Common Stock and Outstanding Voting Securities, as the case may be; (ii) no Person (excluding the Corporation, any employee benefit plan (or related trust) of the Corporation or such corporation resulting from such reorganization, merger or consolidation and any Person beneficially owning, immediately prior to such reorganization, merger or consolidation, directly or indirectly, 30% or more of the Outstanding Common Stock or Outstanding Voting Securities, as the case may be) beneficially owns, directly or indirectly, 30% or more of the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation or the combined voting power of

the then outstanding voting securities of such corporation entitled to vote generally in the election of directors; and (iii) at least a majority of the members of the board of directors of the corporation resulting from such reorganization, merger or consolidation were members of the Incumbent Board at the time of the execution of the initial agreement providing for such reorganization, merger or consolidation; or

(d) Approval by the shareholders of the Corporation of (i) a complete liquidation or dissolution of the Corporation or (ii) the sale or other disposition of all or substantially all of the assets of the Corporation, other than to a corporation with respect to which, following such sale or other disposition, (A) more than 50% of the then outstanding shares of common stock of such corporation and more than 50% of the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Common Stock and Outstanding Voting Securities immediately prior to such sale or other disposition in substantially the same proportion as their ownership immediately prior to such sale or other disposition of the Outstanding Common Stock or Outstanding Voting Securities, as the case may be; (B) no Person (excluding the Corporation and any employee benefit plan (or related trust) of the Corporation or such corporation and any Person beneficially owning, immediately prior to such sale or other disposition, directly or indirectly, 30% or more of the Outstanding Common Stock or Outstanding Voting Securities, as the case may be) beneficially owns, directly or indirectly, 30% or more of the then outstanding shares of common stock of



such corporation or 30% or more of the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors; and (C) at least a majority of the members of the board of directors of such corporation were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board providing for such sale or other disposition of assets of the Corporation.

A "Change of Control" will not include any transaction otherwise covered by subsections (a) through (d) above in which beneficial ownership of the Outstanding Common Stock is acquired by, or the Corporation is merged or consolidated with an affiliate of, a "group" (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) in which David O. Corriveau and James W. Corley are named participants in a Form 13E-3 (or any successor form) filed with the Securities and Exchange Commission and remain as executive officers and directors of the Corporation or its successor after the completion of such transaction.

3. Employment Period. The Company hereby agrees to continue the Executive in its employ, and the Executive hereby agrees to remain in the employ of the Company, in accordance with the terms and provisions of this Agreement, for the period commencing on the Effective Date and ending on the second anniversary of such date (the "EMPLOYMENT PERIOD"). Employment by one or more of the affiliated companies, as hereinafter defined, shall be considered employment by the Company.

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#### 4. Terms of Employment.

##### (a) Position and Duties.

(i) During the Employment Period, (A) the Executive's position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be consistent in all material respects with the most significant of those held, exercised or assigned at any time during the 90-day period immediately preceding the Effective Date and (B) the Executive's services shall be performed at the location where the Executive was employed immediately preceding the Effective Date or any office that is the headquarters of the Company and is less than 25 miles from such location.

(ii) During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement for the Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of the Executive's responsibilities to the Company. It is expressly understood and agreed that to the extent that any such activities have been conducted by the Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not hereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company.

##### (b) Compensation.

(i) Base Salary. During the Employment period, the Executive shall receive an annual base salary ("ANNUAL BASE SALARY"), which shall be paid in equal installments on a monthly basis, at least equal to twelve times the highest monthly base salary paid or payable to the Executive by the Company and its affiliated companies during the twelve-month period immediately preceding the month in which the Effective Date occurs. During the Employment Period, the Annual Base Salary shall be reviewed at least annually and shall be increased at any time and from time to time as shall be substantially consistent with increases in base salary generally awarded in the ordinary course of

business to other peer executives of the Company and its affiliated companies. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased. As used in this Agreement, the term "AFFILIATED COMPANIES" shall include any company controlled by, controlling or under common control with the Company.

(ii) Annual Bonus. In addition to Annual Base Salary, the Executive shall be awarded, for each fiscal year ending during the Employment Period, an annual bonus (the "ANNUAL BONUS") in cash at least equal to the greater of: (a) the maximum bonus that the Executive could have been paid pursuant to the executive incentive bonus plan in effect ninety (90) days prior to the Effective Date and (b) fifty percent (50%) of the Annual Base Salary then in effect. Each such Annual Bonus shall be paid no later than the end of the third month of the fiscal year next following the fiscal year for which the Annual Bonus is awarded, unless the Executive shall elect to defer the receipt of such Annual Bonus.

(iii) Incentive, Savings and Retirement Plans. During the Employment Period, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies and programs applicable generally to other peer executives of the Company and its affiliated companies. Such plans, practices, policies and programs shall provide the Executive with incentive opportunities (measured with respect to both regular and special incentive opportunities, if any), savings opportunities and retirement benefit opportunities, in each case, as favorable as the most favorable of those provided by the Company and its affiliated companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(iv) Welfare Benefit Plans. During the Employment Period, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, salary continuance, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent applicable generally to other peer executives of the Company and its affiliated companies. Such plans, practices, policies and programs shall provide the Executive with benefits that are, in each case, as favorable, as the most favorable of such plans, practices, policies and programs in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(v) Expenses. During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable employment expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and its affiliated companies in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vi) Fringe Benefits. During the Employment Period, the Executive shall be entitled to fringe benefits in accordance with the most favorable plans, practices, programs and policies of the Company and its affiliated companies in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date, or if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vii) Office and Support Staff. During the Employment Period, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to exclusive personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to the Executive by the Company or its affiliated companies at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(viii) Vacation. During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the most favorable plans, policies, programs and practices of the Company and its affiliated companies as in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

#### 5. Termination of Employment.

(a) Death or Disability. The Executive's employment shall terminate automatically upon the Executive's death during the Employment Period. If the Company determines in good faith that the Disability of the Executive has occurred during the Employment Period (pursuant to the definition of Disability set forth below), it may give to the Executive written notice in accordance with Section 12(b) of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by the Executive (the "DISABILITY EFFECTIVE DATE"), provided that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties. For purposes of this Agreement, "DISABILITY" shall mean the absence of the Executive from the Executive's full-time duties with the Company for 180 consecutive calendar days as a result of incapacity due to mental or physical illness that is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative (such agreement as to acceptability not to be withheld unreasonably).

(b) Cause. The Company may terminate the Executive's employment during the Employment Period for Cause. For purposes of this Agreement, "CAUSE" shall be determined by the Committee in exercise of good faith and reasonable judgment and shall mean (i) a material violation of Company policy or a material breach by the Executive of the

Executive's obligations under Section 4(a) (other than as a result of incapacity due to physical or mental illness) that is demonstrably willful and deliberate on the Executive's part, committed in bad faith or without reasonable belief that the action or inaction that constitutes such breach is in the best interests of the Company, and, if subject to being effectively remedied, is not remedied in a reasonable period of time after receipt of written notice from the Company specifying such breach or violation ("NOTE OF BREACH"); or (ii) the conviction of the Executive of a felony involving moral turpitude.

If Company delivers a Notice of Breach to Executive describing the situation to be remedied and Executive fails to remedy such violation or breach within a reasonable period of time (as determined in the Notice of Breach), a Notice of Termination delivered to the Executive subsequent to the Notice of Breach shall become effective retroactively back to the date of delivery of the Notice of Breach to the Executive.

(c) Good Reason. The Executive's employment may be terminated during the Employment Period by the Executive for Good Reason. For purposes of this Agreement, "GOOD REASON" shall mean, without the Executive's express written consent, the occurrence of any one or more of the following:

(i) the assignment to the Executive of any duties, authority or responsibilities materially inconsistent with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities with the most significant of those held, exercised or assigned at any time during the 90-day period immediately preceding the Effective Date (excluding those duties that are only for the purpose of effecting the Change of Control) or any other action by the Company that results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated action that is insubstantial or inadvertent and that is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(ii) any failure by the Company to comply with any of the provisions of Section 4(b), other than an isolated failure that is insubstantial or inadvertent failure and that is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(iii) the Company's requiring the Executive to be based at any office or location other than that described in Section 4(a)(i)(B);

(iv) any purported termination by the Company of the Executive's employment otherwise than as expressly permitted by this Agreement;

(v) any failure by the Company to obtain a satisfactory agreement from any successor to the Company to assume and agree to perform the Company's obligations under this Agreement, as contemplated in Section 11(c) herein;

(vi) the Company requiring the Executive to engage in excessive travel

in comparison to travel required during the 90-day period immediately preceding the Effective Date; or

(vii) a substantial change in organizational reporting relationships as compared to the 90-day period immediately preceding the Effective Date that will have a significant impact on the status, offices, titles and reporting requirements of the Executive.

The Executive's continued employment shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason.

(d) Notice of Termination. Any termination by the Company for Cause, or by the Executive for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 12(b). For purposes of this Agreement, a "NOTICE OF TERMINATION" means a written notice that (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date of such notice. The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance that supports a showing of Good Reason or Cause shall not waive any right of the Executive or the Company hereunder or preclude the Executive or the Company from later asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder. The Company may not terminate the Executive's employment for Cause after the Executive has delivered a Notice of Termination for Good Reason; nor may the Executive terminate employment with Company for Good Reason after Company has delivered a Notice of Termination to the

Executive.

(e) Date of Termination. "DATE OF TERMINATION" means (i) if the Executive's employment is terminated by the Company for Cause or by the Executive for Good Reason, the date of receipt of the Notice of Termination or any later date specified therein, as the case may be; (ii) if the Executive's employment is terminated by the Company other than for Cause or Disability, the date on which the Company notifies the Executive of such termination; and (iii) if the Executive's employment is terminated by reason of death or Disability, the date of death of the Executive or the Disability Effective Date, as the case may be.

#### 6. Obligations of the Company upon Termination.

(a) Good Reason; Other than for Cause, Death or Disability. If, during the Employment Period, the Company shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) The Company shall pay to the Executive in a lump sum in cash within 30 days after the Date of Termination the aggregate of the following amounts:

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A. The sum of (1) the Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid, (2) the product of (x) the Annual Bonus and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 and (3) any compensation previously deferred by the Executive (together with any accrued interest or earnings thereon) and any accrued vacation pay, in each case to the extent not theretofore paid (the sum of the amounts described in clauses (1), (2) and (3) shall be hereinafter referred to as the "ACCRUED OBLIGATIONS"); and

B. The amount (such amount shall be hereinafter referred to as the "SEVERANCE AMOUNT") equal to two (2) times the sum of (x) the Executive's Annual Base Salary and (y) the Annual Bonus; provided, however, that such amount shall be reduced by the present value (determined as provided in Section 280G(d)(4) of the Internal Revenue Code of 1986, as amended (the "CODE")) of any other amount of severance relating to salary or bonus continuation to be received by the Executive upon termination of employment of the Executive under any severance plan, policy or arrangement of the Company; and

C. A separate lump-sum supplemental retirement benefit (the amount of such benefit shall be hereinafter referred to as the "SUPPLEMENTAL RETIREMENT AMOUNT") equal to the difference between (1) the amount payable under any Company retirement plan (or any successor plan thereto) (the "RETIREMENT PLAN"), of which the Executive was a participant, and any supplemental and/or excess retirement plan of the Company and its affiliated companies providing benefits for the Executive (the "SERP") that the Executive would receive if the Executive's employment continued at the compensation level provided for in Sections 4(b)(i) and 4(b)(ii) for the remainder of the Employment Period plus two (2) years, assuming for this purpose that all accrued benefits are fully vested, and (2) the Executive's actual benefit (paid or payable), if any, under the Retirement Plan and the SERP; and

(ii) For the remainder of the Employment Period plus two (2) years, or such longer period as any plan, program, practice or policy may provide, the Company shall continue benefits (or pay the pre-tax economic equivalent) to the Executive and/or the Executive's family at least equal to those which would have been provided to them in accordance with the plans, programs, practices and policies described in Sections 4(b)(v) and 4(b)(vii) if the Executive's employment had not been terminated in accordance with the most favorable plans, practices, programs or policies of the Company and its affiliated companies as in effect and applicable generally to other peer executives and their families during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at

any time thereafter with respect to other peer executives of the Company and its affiliated companies and their families, provided, however, that if the Executive becomes reemployed with another employer and is eligible to receive medical or other welfare benefits under another employer provided plan, the medical and other welfare benefits described herein shall be secondary to those provided under such other plan during such applicable period of eligibility (such continuation of such benefits for the applicable period

herein set forth shall be hereinafter referred to as "WELFARE BENEFIT CONTINUATION". For purposes of determining eligibility of the Executive for retiree benefits pursuant to such plans, practices, programs and policies, the Executive shall be considered to have remained employed until the end of the Employment Period and to have retired on the last day of such period; and

(iii) To the extent not theretofore paid or provided, for the remainder of the Employment Period plus two (2) years, or such longer period as any plan, program, practice or policy may provide, the Company shall timely pay or provide to the Executive and/or the Executive's family any other amounts or benefits (or the pre-tax economic equivalent) required to be paid or provided or which the Executive and/or the Executive's family is eligible to receive pursuant to this Agreement and under any plan, program, policy or practice or contract or agreement of the Company and its affiliated companies as in effect and applicable generally to other peer executives of the Company and its affiliated companies and their families during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally thereafter with respect to other peer executives of the Company and its affiliated companies and their families (such other amounts and benefits shall be hereinafter referred to as the "OTHER BENEFITS").

(b) Death. If the Executive's employment is terminated by reason of the Executive's death during, the Employment Period, this Agreement shall terminate without further obligations to the Executive's legal representatives under this Agreement, other than for (i) payment of Accrued Obligations (which shall be paid to the Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination) and the timely payment or provision of the Welfare Benefit Continuation and Other Benefits (excluding, in each case, Death Benefits (as defined below)) and (ii) payment to the Executive's estate or beneficiary, as applicable, in a lump-sum in cash within 30 days of the Date of Termination of an amount equal to (A) the sum of the Severance Amount and the Supplemental Retirement Amount reduced, but not below zero, by (B) the present value (determined as provided in Section 280G(d)(4) of the Code) of any cash amount to be received by the Executive or the Executive's family as a death benefit pursuant to the terms of any plan, policy or arrangement of the Company and its affiliated companies, but not including any proceeds of life insurance covering the Executive to the extent paid for directly or on a contributory basis by the Executive (which shall be paid in any event as an Other Benefit) (the benefits included in this clause (B) shall be hereinafter referred to as the "DEATH BENEFITS").

(c) Disability. If the Executive's employment is terminated by reason of the Executive's Disability during the Employment Period, this Agreement shall terminate without further obligations to the Executive, other than for (i) payment of Accrued Obligations (which shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination) and the timely payment or provision of the Welfare Benefit Continuation and Other Benefits (excluding, in each case, Disability Benefits, as defined below) and (ii) payment to the Executive in a lump sum in cash within 30 days of the Date of Termination of an amount equal to (A) the sum of the Severance Amount and the Supplemental Retirement Amount reduced, but not below zero, by (B) the present value (determined as provided in Section 280G(d)(4) of

the Code) of any cash amount to be received by the Executive as a disability benefit pursuant to the terms of any plan, policy or arrangement of the Company and its affiliated companies, but not including any proceeds of disability insurance covering the Executive to the extent paid for directly or on a contributory basis by the Executive (which shall be paid in any event as an Other Benefit) (the benefits included in this clause (B) shall be hereinafter referred to as the "DISABILITY BENEFITS").

(d) Cause; Other than for Good Reason. If the Executive's employment shall be terminated for Cause during the Employment Period, this Agreement shall terminate without further obligations to the Executive other than the obligation to pay to the Executive Annual Base Salary through the Date of Termination plus the amount of any compensation previously deferred by the Executive, in each case to the extent theretofore unpaid. If the Executive terminates employment during the Employment Period, excluding a termination for Good Reason, this Agreement shall terminate without further obligations to the Executive, other than for Accrued Obligations and the timely payment or provision of Other Benefits. In such case, all Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination.

7. Non-exclusivity of Rights. Except as provided in Sections 6(a)(ii), 6(b) and 6(c), nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its affiliated companies and for which the Executive may qualify, nor shall anything herein limit or otherwise affect such rights as the Executive may have under any contract or agreement with the Company or any of its affiliated companies. Amounts that are vested benefits or that the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its affiliated companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

#### 8. Full Settlement; Resolution of Disputes.

(a) The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Executive or others. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement and, except as provided in Section 6(a)(ii), such amounts shall not be reduced if the Executive obtains other employment.

(b) Parties recognize that there may be disputes between them as to whether the circumstances of the Executive's termination are covered by Section 6(a), (b) or (c) as the Executive and/or the Executive's family may contend or are covered by Section 6(d) as Company may contend. In the event of such a dispute, there may be a need for a binding ruling by a neutral decision maker. In such an event, the following shall apply:

(i) If the Executive delivers a Notice of Termination to Company based on Section 6(a), (b) or (c), Company must pay the benefits provided in Section 6 unless Company commences arbitration to resolve the dispute within 30 days of the receipt of a Notice of Termination by the Executive. Failure to commence arbitration within the time stated is deemed an admission by Company of the Executive's reason for termination.

(ii) If Company delivers a Notice of Termination based on Section 6(d), Executive and/or Executive's family must commence arbitration to dispute the terms of such termination. Failure to commence arbitration within 60 days of the receipt of a Notice of Termination from

Company is deemed an admission by the Executive of termination pursuant to Section 6(d).

(iii) Arbitration shall be conducted before a panel of three (3) arbitrators sitting in a location selected by the Executive within fifty (50) miles from the location of his job with the Company, in accordance with the rules of the American Arbitration Association then in effect. One arbitrator shall be selected by the Company. One arbitrator shall be selected by the Executive. The third arbitrator shall be selected by the two arbitrators selected by the Company and the Executive. Judgment may be entered on the award of the arbitrators in any court having proper jurisdiction, and such shall constitute the final, nonappealable decision.

(iv) Company agrees to pay promptly as incurred, to the full extent permitted by law, all legal fees and expenses that the Executive may reasonably incur as a result of any contest by the Company, the Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of any contest by the Executive about the amount of any payment pursuant to this Agreement), including all costs of arbitration, plus in each case interest on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Code.

(v) During the pendency of a dispute resolution, Company shall proceed to pay Annual Base Salary and Annual Bonus (referred to collectively as "CONTINUATION BENEFITS") to the Executive and/or the Executive's family or other beneficiaries, as the case may be, as though no such termination had occurred.

(A) If it is determined that the Executive's contention that Section 6(a), (b) or (c) was applicable, no portion of the Continuation Benefits will be recoverable by Company, nor shall any portion of such be credited towards the benefits due (per Section 6) to the Executive. If such a contention is not sustained by the arbitration panel, all Continuation Benefits are recoverable by Company, plus interest at the rate of interest that Company could have earned on amounts paid for such Continuation Benefits.

(B) If it is determined that Company's contention that Section

6(d) was applicable is found to be incorrect, none of the Continuation Benefits shall be credited to the benefits due (per Section 6) to the Executive. If, however, Company's contention that Section 6(d) was applicable is found to be correct, all amounts paid by Company as Continuation Benefits shall be recoverable from Executive plus interest at the rate of interest that Company could have earned on the amounts paid for such Continuation Benefits.

(C) If the Executive does not make payment of the Continuation Benefits and accrued interest due to Company within 60 days following the resolution of the dispute for any amounts recoverable by Company, interest (on the total amount due) shall be due at the lesser of:

- (1) The rate published as the Prime Rate in the Wall Street Journal plus one percentage point on the date of receipt of the Notice of Termination; or
- (2) The maximum amount of interest allowed by law.

(D) If the Company does not pay any amount due to the Executive hereunder within the time provided, then in addition to such amount, Company shall pay Executive an amount of interest (on the total amount due) at the lesser of:



- (1) The rate published as the Prime Rate in the Wall Street Journal plus one percentage point on the date such payment is due; or
- (2) The maximum amount of interest allowed by law.

#### 9. Limitation on Termination Payment.

##### (a) Determination of Termination Payment Limit.

Notwithstanding any other provision of this Agreement, if any portion of the Severance Amount or any other payment under this Agreement, or under any other agreement with or plan of the Company (in the aggregate "TOTAL PAYMENTS") would constitute an Excess Parachute Payment, then the payments to be made to the Executive under this Agreement shall be reduced such that the value of the aggregate Total Payments that the Executive is entitled to receive shall be one dollar (\$1) less than the maximum amount which the Executive may receive without becoming subject to the tax imposed by Section 4999 of the Code, or which the Company may pay without loss of deduction under Section 280G(a) of the Code. However, the payments to be made to the Executive under this Agreement shall be reduced if and only if so reducing the payments results in the Executive receiving a greater net Severance Amount than he would have received had a reduction not occurred and an excise tax been paid pursuant to Code Section 4999. For purposes of this Agreement, the terms "EXCESS PARACHUTE PAYMENT" and "PARACHUTE PAYMENTS" shall have the meanings assigned to them in Section 280G of the Code, and such Parachute Payments shall be valued as provided therein.

(b) Procedure for Establishing Limitation on Termination Payment. Within sixty (60) days following delivery of the Notice of Termination or notice by the Company to the Executive of its belief that there is a payment or benefit due the Executive which will result in an "Excess Parachute Payment", the Executive and the Company, at the Company's expense, shall obtain the opinion of such legal counsel, which need not be unqualified, as the Executive may choose, which sets forth: (i) the amount of the Executive's "Annualized Includible Compensation For The Base Period" (as defined in Code Section 280G(d)(1)); (ii) the present value of the Total Payments; and (iii) the amount and present value of any Excess Parachute Payment. The opinion of such legal counsel may be supported by the opinion of a certified public accounting firm and, if necessary, a firm of recognized executive compensation consultants. Such opinion shall be binding upon the Company and the Executive. In the event that such opinion determines that there would be an Excess Parachute Payment, the Severance Amount hereunder or any other payment determined by such counsel to be includible in Total Payments shall be reduced or eliminated so that under the basis of calculations set forth in such opinion, there will be no Excess Parachute Payment. The provisions of this Section 9(b), including the calculations, notices, and opinion provided for herein shall be based upon the conclusive presumption that: (i) the compensation and benefits provided for herein; and (ii) any other compensation earned prior to the Effective Date of termination by the Executive pursuant to the Company's compensation programs (if such payments would have been made in the future in any event, even though the timing of such payment is triggered by the Change-of-Control), are reasonable.

(c) Subsequent Imposition of Excise Tax. If, notwithstanding compliance with the provisions of Sections 9(a), and 9(b) herein, it is ultimately determined by a court or pursuant to a final determination by the Internal Revenue Service that any portion of the Total Payments is considered to be a Parachute Payment, subject to excise tax under Section 4999 of the Code, which was not contemplated to be a Parachute Payment at the time of payment (so as to accurately determine whether a limitation benefit to the Executive, as provided in Section 9(b) hereof), the Executive shall be entitled to receive a lump sum cash payment sufficient to place the Executive in the same net after-tax position, computed by using the Special Tax Rate (as such term is defined below), that the Executive would have been in had such payment not been subject to such excise tax, and had the Executive not incurred any interest charges or penalties with respect to the imposition of such excise tax. For

purposes of this Agreement, the "SPECIAL TAX RATE" shall be the highest effective federal and state marginal tax rates applicable to the Executive in the year in which the payment contemplated under this Section 9 is made.

10. Confidential Information. The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its affiliated companies, and their respective businesses, which shall have been obtained by the Executive during the Executive's employment by the Company or any of its affiliated companies and which shall not be or have become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those designated by it. In no event shall an asserted violation of the provisions of this Section 10 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

11. Successors.

(a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "COMPANY" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid that assumes and agrees to perform this Agreement by operation of law, or otherwise.

(d) Failure of the Company to obtain such assumption and agreement prior to the effective date of any such succession shall be a breach of this Agreement and shall entitle the Executive to compensation from the Company in the same amount and on the same terms as the Executive would be entitled to hereunder if he had terminated his employment with the Company voluntarily for Good Reason. For the purpose of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Date of Termination.

12. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed

by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:

Bryan L. Spain  
3207 Vernon Drive  
Arlington, TX 76015

If to the Company:

Dave & Buster's, Inc.  
2481 Manana Drive  
Dallas, TX 75220  
Attention: General Counsel

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such Federal, state or local taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Executive's or the Company's failure to insist upon strict compliance with any provision hereof or any other provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment for Good Reason pursuant to Section 5(c)(i)-(v), shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(f) The Executive and the Company acknowledge that, except as may otherwise be provided under any other written agreement between the Executive and the Company, the employment of the Executive by the Company prior to the Effective Date is "at will" and may be terminated by either the Executive or the Company at any time. If prior to the Effective Date, the Executive's employment with the Company terminates, the Executive shall have no further rights and obligations under this Agreement.

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(g) No provision of this Agreement may be modified, waived, or discharged unless such modification, waiver, or discharge is agreed to in writing and signed by the Executive and by an authorized member of the Committee, or by the respective parties' legal representatives and successors.

(h) The Company and Wachovia Bank of North Carolina, N.A., as Trustee have previously executed the Dave & Buster's, Inc. Executive Retention Agreement Trust dated April 3, 2000. The Company covenants with Executive to: (i) identify Executive as a Plan Participant thereunder by amending Attachment 1 thereto; and (ii) make all payments required of the Company pursuant to such agreement.

IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from its Committee, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

/s/ Bryan L. Spain

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Bryan L. Spain

Dave & Buster's, Inc.

By: /s/ David O. Corriveau  
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Its: President  
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