

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT PURSUANT  
TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported) January 6, 2009 (December 31, 2008)

GAMESTOP CORP.

(Exact Name of Registrant as Specified in Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

1-32637

(Commission File Number)

20-2733559

(IRS Employer Identification No.)

625 Westport Parkway, Grapevine, Texas

(Address of Principal Executive Offices)

76051

(Zip Code)

(817) 424-2000

Registrant's telephone number, including area code

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

Section 409A of the Internal Revenue Code of 1986, as amended, enacted as part of the American Jobs Creation Act of 2004 (“Section 409A”), imposes immediate taxation, a twenty percent (20%) additional tax and interest assessments on “deferred compensation,” as defined, that does not comply with the requirements of Section 409A. Applicable regulations gave companies until December 31, 2008 to amend their existing benefit plans and agreements to be compliant with Section 409A.

GameStop Corp. (the “Company”) conducted a review of the Company’s existing benefit plans and agreements to bring all such plans and agreements into full documentary compliance with Section 409A as of December 31, 2008.

The Board of Directors of the Company has adopted and approved certain minor amendments to the Company’s 2001 Incentive Plan, effective December 31, 2008, in order to comply with Section 409A, which amendments are set forth in the Third Amended and Restated GameStop Corp. 2001 Incentive Plan, a copy of which is included as Exhibit 10.1 of this Current Report on Form 8-K.

Further, the Company amended, effective December 31, 2008, the existing employment agreements (as amended and restated, collectively, the “Employment Agreements”) between the Company and each of R. Richard Fontaine, Executive Chairman of the Company, Daniel A. DeMatteo, Chief Executive Officer of the Company, David W. Carlson, Executive Vice President and Chief Financial Officer of the Company, Tony Bartel, Executive Vice President – Merchandising and Marketing of the Company, and Paul Raines, Chief Operating Officer of the Company, to bring the Employment Agreements into compliance with Section 409A. The principal amendments to the Employment Agreements were to modify the definitions of “Good Reason” and “Change in Control” to conform to the “safe harbor” provisions of Section 409A.

The above summary of the Employment Agreements does not purport to be complete and is qualified in its entirety by reference to the actual Employment Agreements, a copy of which are included as Exhibit 10.2, Exhibit 10.3, Exhibit 10.4, Exhibit 10.5 and Exhibit 10.6, respectively, of this Current Report on Form 8-K and incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

- 10.1 Third Amended and Restated GameStop Corp. 2001 Incentive Plan
- 10.2 Amended and Restated Executive Employment Agreement between GameStop Corp. and R. Richard Fontaine dated December 31, 2008
- 10.3 Amended and Restated Executive Employment Agreement between GameStop Corp. and Daniel A. DeMatteo dated December 31, 2008
- 10.4 Amended and Restated Executive Employment Agreement between GameStop Corp. and David W. Carlson dated December 31, 2008
- 10.5 Amended and Restated Executive Employment Agreement between GameStop Corp. and Tony Bartel dated December 31, 2008
- 10.6 Amended and Restated Executive Employment Agreement between GameStop Corp. and Paul Raines dated December 31, 2008

**SIGNATURES**

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 hereunto duly authorized.

GAMESTOP CORP.

Date: January 6, 2009

By:           /s/ David W. Carlson            
David W. Carlson  
Executive Vice President and  
Chief Financial Officer

## EXHIBIT INDEX

<u>Exhibit</u>	<u>Description</u>
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**THIRD AMENDED AND RESTATED  
GAMESTOP CORP.  
2001 INCENTIVE PLAN**

**GAMESTOP CORP.**, a Delaware corporation (the "Company"), has adopted the GameStop Corp. 2001 Incentive Plan (the "Plan") which has been previously amended and restated. The Company hereby amends and restates the Plan effective as of December 31, 2008 to read as follows:

**RECITALS**

WHEREAS, the Company desires to encourage high levels of performance by those individuals who are key to the success of the Company or any parent, subsidiary or affiliate of the Company, to attract new individuals who are highly motivated and who will contribute to the success of the Company and to encourage such individuals to remain as officers, employees, consultants, advisors and/or directors of the Company and its parent, subsidiaries and affiliates by increasing their proprietary interest in the Company's growth and success.

WHEREAS, to attain these ends, the Company has formulated the Plan embodied herein to authorize the granting of incentive awards through grants of options to purchase shares ("Options"), grants of share appreciation rights, grants of Share Purchase Awards (hereafter defined), grants of Restricted Share Awards (hereafter defined), or any other award made under the Plan to those persons (each such person a "Participant") whose judgment, initiative and efforts are, have been, or are expected to be responsible for the success of the Company or any parent, subsidiary or affiliate of the Company.

NOW, THEREFORE, the Company hereby constitutes, establishes and adopts the following Plan and agrees to the following provisions:

**ARTICLE 1  
PURPOSE OF THE PLAN**

1.1 *Purpose.* The purpose of the Plan is to assist the Company or any parent, subsidiary or affiliate of the Company in attracting and retaining selected individuals to serve as directors, officers, consultants, advisors, and employees of the Company or any parent, subsidiary or affiliate of the Company who will contribute to the Company's success and to achieve long-term objectives which will inure to the benefit of all shareholders of the Company through the additional incentive inherent in the ownership of the Company's Class A Common Stock, par value \$.001 per share (the "Shares"). Options granted under the Plan will be either "incentive stock options," intended to qualify as such under the provisions of Section 422 of the Internal Revenue Code of 1986, as from time to time amended (the "Code"), or "nonqualified stock options." For purposes of the Plan, the terms "subsidiary" and "parent" shall mean "subsidiary corporation" and "parent corporation," respectively, as such terms are defined in Sections 424(f) and 424(e) of the Code, and "affiliate" shall have the meaning set forth in Rule 12b-2 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Awards other than incentive stock options shall be made hereunder only to the extent the underlying stock constitutes "service recipient stock" of an "eligible issuer" as defined under Section 409A of the

Code. Accordingly, no Awards other than incentive stock options may be awarded to a service provider of a parent or entity in which the Company does not hold a controlling interest. For purposes of the Plan, the term "Award" shall include a grant of an Option, a grant of a share appreciation right, a grant of a Share Purchase Award, a grant of a Restricted Share Award, or any other award made under the terms of the Plan.

**ARTICLE 2  
SHARES SUBJECT TO AWARDS**

2.1 Number of Shares. Subject to the adjustment provisions of Section 9.9 hereof, the aggregate number of Shares which may be issued under Awards under the Plan, whether pursuant to Options, Share Purchase Awards, Restricted Share Awards or any other award under the Plan shall be 40,000,000 Shares, plus an additional 3,500,000 Shares which may be issued solely pursuant to Options. No Options to purchase fractional Shares shall be granted and no fractional shares shall be issued under the Plan. For purposes of this Section 2.1, the Shares that shall be counted toward such limitation shall include all Shares:

- (1) issued or issuable pursuant to Options that have been or may be exercised;
- (2) issued or issuable pursuant to Share Purchase Awards;
- (3) issued as, or subject to issuance as a Restricted Share Award; and
- (4) issued or issuable under any other award granted under the terms of the Plan.

2.2 Shares Subject to Terminated Awards. The Shares covered by any unexercised portions of terminated Options granted under Articles 4 and 6, Shares forfeited as provided in Section 8.2(a) and Shares subject to any Awards which are otherwise surrendered by the Participant without receiving any payment or other benefit with respect thereto may again be subject to new Awards under the Plan, other than grants of Options intended to qualify as incentive stock options. In the event the purchase price of an Option is paid in whole or in part through the delivery of Shares, the number of Shares tendered for the exercise of the Option shall not again be available for the grant of Awards under the Plan. Shares subject to Options, or portions thereof, which have been surrendered in connection with the exercise of share appreciation rights shall not again be available for the grant of Awards under the Plan.

2.3 Character of Shares. Shares delivered under the Plan may be authorized and unissued Shares or Shares acquired by the Company, or both.

2.4 Limitations on Grants to Individual Participant. Subject to adjustments pursuant to the provisions of Section 9.9 hereof, the maximum number of Shares with respect to which Options or stock appreciation rights may be granted hereunder to any employee during any fiscal year of the Company shall be 4,500,000 Shares (the "Limitation").

If an Option is canceled, the canceled Option shall continue to be counted toward the Limitation for the year granted. An Option (or a share appreciation right) that is repriced during any fiscal year is treated as the cancellation of the Option (or share appreciation right) and a

grant of a new Option (or share appreciation right) for purposes of the Limitation for that fiscal year.

**ARTICLE 3**  
**ELIGIBILITY AND ADMINISTRATION**

3.1 Awards to Employees, Directors and Others. (a) Participants who receive Options under Articles 4 and 6 hereof (including share appreciation rights under Article 5 (“Optionees”), Share Purchase Awards under Article 7 or Restricted Share Awards or other Share-based awards under Article 8 (in either case, a “Participant”) shall consist of such key officers, employees, consultants, advisors and directors of the Company or any parent, subsidiary or affiliate of the Company as the Committee (hereinafter defined) shall select from time to time. The Committee’s designation of an Optionee or Participant in any year shall not require the Committee to designate such person to receive Awards or grants in any other year. The designation of an Optionee or Participant to receive Awards or grants under one portion of the Plan shall not require the Committee to include such Optionee or Participant under other portions of the Plan.

(b) No Option that is intended to qualify as an “incentive stock option” may be granted (x) to any individual that is not an employee of the Company or any parent, subsidiary or affiliate thereof, or (y) to any employee who, at the time of such grant, owns, directly or indirectly (within the meaning of Sections 422(b)(6) and 424(d) of the Code), shares possessing more than 10% of the total combined voting power of all classes of shares of the Company or any parent, subsidiary or affiliate of the Company, unless at the time of such grant, (i) the option price is fixed at not less than 110% of the Fair Market Value (as defined below) of the Shares subject to such Option, determined on the date of the grant, and (ii) the exercise of such Option is prohibited by its terms after the expiration of five (5) years from the date such Option is granted.

3.2 Administration. The Plan shall be administered by a committee (the “Committee”) consisting of not fewer than two directors of the Company (the directors of the Company being hereinafter referred to as the “Directors”), as designated by the Directors. The Directors may remove from, add members to, or fill vacancies in the Committee. Unless otherwise determined by the Directors, each member of the Committee is intended to be a “Non-Employee Director” within the meaning of Rule 16b-3 (or any successor rule) of the Exchange Act and an “outside director” within the meaning of Section 162(m)(4)(C)(i) of the Code and the regulations thereunder.

Any Award to a member of the Committee shall be on terms consistent with Awards made to other Directors who are not members of the Committee and who are not employees, except where the Award is approved or ratified by the Compensation Committee (excluding persons who are also members of the Committee) of the Board of Directors of the Company.

(a) The Committee is authorized, subject to the provisions of the Plan, to establish such rules and regulations as it may deem appropriate for the conduct of meetings and proper administration of the Plan. All actions of the Committee shall be taken by majority vote of its members. The Committee is also authorized, subject to the provisions of the Plan, to make

provisions in various Awards pertaining to a “change of control” of the Company and to amend or modify existing Awards.

(b) Subject to the provisions of the Plan, the Committee shall have authority, in its sole discretion, to interpret the provisions of the Plan and any Award thereunder and, subject to the requirements of applicable law, including Rule 16b-3 of the Exchange Act, to prescribe, amend, and rescind rules and regulations relating to the Plan or any Award thereunder as it may deem necessary or advisable. All decisions made by the Committee pursuant to the provisions of the Plan shall be final, conclusive and binding on all persons, including the Company, its shareholders, Directors and employees, and Plan participants and beneficiaries.

3.3 *Designation of Consultants/Liability.* (a) The Committee may designate employees of the Company and professional advisors to assist the Committee in the administration of this Plan and may grant authority to employees to execute agreements or other documents on behalf of the Committee.

(b) The Committee may employ such legal counsel, consultants and agents as it may deem desirable for the administration of this Plan and may rely upon any opinion received from any such counsel or consultant and any computation received from any such consultant or agent. Expenses incurred by the Committee or the Board in the engagement of any such counsel, consultant or agent shall be paid by the Company. The Committee, its members and any person designated pursuant to Section 3.3(a) shall not be liable for any action or determination made in good faith with respect to this Plan. To the maximum extent permitted by applicable law, no officer or former officer of the Company or member or former member of the Committee or of the Board shall be liable for any action or determination made in good faith with respect to this Plan or any Award granted under it. To the maximum extent permitted by applicable law and to the extent not covered by insurance, each officer or former officer and member or former member of the Committee or of the Board shall be indemnified and held harmless by the Company against any cost or expense (including reasonable fees of counsel reasonably acceptable to the Company) or liability (including any sum paid in settlement of a claim with the approval of the Company), and advanced amounts necessary to pay the foregoing at the earliest time and to the fullest extent permitted, arising out of any act or omission to act in connection with this Plan, except to the extent arising out of such officer’s or former officer’s, member’s or former member’s own fraud or bad faith. Such indemnification shall be in addition to any rights of indemnification the officers, directors or members or former officers, directors or members may have under applicable law. Notwithstanding anything else herein, this indemnification will not apply to the actions or determinations made by an individual with regard to Awards granted to him or her under this Plan.

#### **ARTICLE 4 OPTIONS**

4.1 *Grant of Options.* The Committee shall determine, within the limitations of the Plan generally and within the limitations of Section 1.1 specifically, those key officers, employees, consultants, advisors and Directors of the Company or any parent, subsidiary or affiliate of the Company to whom Options are to be granted under the Plan, the number of Shares that may be purchased under each such Option, the option price and other terms of each such

Option, and shall designate such Options at the time of the grant as either “incentive stock options” or “nonqualified stock options”; provided, however, that Options granted to employees of an affiliate (that is not also a parent or a subsidiary) or to non-employees of the Company may only be “nonqualified stock options.”

All Options granted pursuant to this Article 4 and Article 6 herein shall be authorized by the Committee and shall be evidenced in writing by share option agreements (“Share Option Agreements”) in such form and containing such terms and conditions as the Committee shall determine that are not inconsistent with the provisions of the Plan, and, with respect to any Share Option Agreement granting Options that are intended to qualify as “incentive stock options,” are not inconsistent with Section 422 of the Code. The granting of an Option pursuant to the Plan shall impose no obligation on the recipient to exercise such Option. Any individual who is granted an Option pursuant to this Article 4 and Article 6 herein may hold more than one Option granted pursuant to such Articles at the same time and may hold both “incentive stock options” and “nonqualified stock options” at the same time. To the extent that any Option does not qualify as an “incentive stock option” (whether because of its provisions, the time or manner of its exercise or otherwise) such Option or the portion thereof which does not so qualify shall constitute a separate “nonqualified stock option.”

4.2 *Option Price.* Subject to Section 3.1(b), the option exercise price per each Share purchasable under any Option granted under the Plan shall not be less than 100% of the Fair Market Value (as hereinafter defined) of such Share on the date of the grant of such Option.

4.3 *Other Provisions.* (a) Options granted pursuant to this Article 4 shall be made in accordance with the terms and provisions of Article 9 hereof and any other applicable terms and provisions of the Plan.

(b) Subject to Section 9.9, the Option exercise price per Share may not be decreased after the Option has been granted, unless otherwise approved by the Company’s stockholders. Notwithstanding the foregoing, the exercise price of such Options shall not be decreased after the date of grant if such action would either cause an amount to be considered “deferred compensation” within the meaning of Code Section 409A that would otherwise not be considered “deferred compensation” or cause an amount to be included in an Award recipient’s income under Code Section 409A.

(c) No Option may be cancelled in exchange for cash at the time the exercise price per Share is greater than the fair market value per Share of the underlying Shares, unless otherwise approved by the Company’s stockholders. Notwithstanding the foregoing, such Options shall not be cancelled in exchange for cash if such action would either cause an amount to be considered “deferred compensation” within the meaning of Code Section 409A that would otherwise not be considered “deferred compensation” or cause an amount to be included in an Award recipient’s income under Code Section 409A.

**ARTICLE 5**  
**SHARE APPRECIATION RIGHTS**

5.1 Grant and Exercise. Share appreciation rights may be granted in conjunction with all or part of any Option granted under the Plan provided such rights are granted at the time of the grant of such Option. A “share appreciation right” is a right to receive cash or whole Shares, as provided in this Article 5, in lieu of the purchase of a Share under a related Option. A share appreciation right or applicable portion thereof shall terminate and no longer be exercisable upon the termination or exercise of the related Option, and a share appreciation right granted with respect to less than the full number of Shares covered by a related Option shall not be reduced until, and then only to the extent that, the exercise or termination of the related Option exceeds the number of Shares not covered by the share appreciation right. A share appreciation right may be exercised by the holder thereof (the “Holder”), in accordance with Section 5.2 of this Article 5, by giving written notice thereof to the Company and surrendering the applicable portion of the related Option. Upon giving such notice and surrender, the Holder shall be entitled to receive an amount determined in the manner prescribed in Section 5.2 of this Article 5. Options which have been so surrendered, in whole or in part, shall no longer be exercisable to the extent the related share appreciation rights have been exercised.

5.2 Terms and Conditions. Share appreciation rights shall be subject to such terms and conditions, not inconsistent with the provisions of the Plan, as shall be determined from time to time by the Committee, including the following:

(a) Share appreciation rights shall be exercisable only at such time or times and to the extent that the Options to which they relate shall be exercisable in accordance with the provisions of the Plan.

(b) Upon the exercise of a share appreciation right, a Holder shall be entitled to receive up to but no more than an amount in cash or whole Shares equal to the excess of the then Fair Market Value of one Share over the option exercise price per Share specified in the related Option multiplied by the number of Shares in respect of which the share appreciation right shall have been exercised. The Holder shall specify in his written notice of exercise, whether payment shall be made in cash or in whole Shares (unless otherwise provided in the agreement governing the share appreciation right). Each share appreciation right may be exercised only at the time and so long as a related Option, if any, would be exercisable or as otherwise permitted by applicable law.

(c) Upon the exercise of a share appreciation right, the Option or part thereof to which such share appreciation right is related shall be deemed to have been exercised for the purpose of the limitation of the number of Shares to be issued under the Plan, as set forth in Section 2.1 of the Plan.

(d) With respect to share appreciation rights granted in connection with an Option that is intended to be an “incentive stock option,” the following shall apply:

(i) No share appreciation right shall be transferable by a Holder other than by will or by the laws of descent and distribution, and share appreciation rights shall be exercisable, during the Holder’s lifetime, only by the Holder.

(ii) Share appreciation rights granted in connection with an Option may be exercised only when the Fair Market Value of the Shares subject to the Option exceeds the option exercise price at which Shares can be acquired pursuant to the Option.

## **ARTICLE 6 RELOAD OPTIONS**

6.1 Authorization of Reload Options. Concurrently with the award of any Option (such Option hereinafter referred to as the “Underlying Option”) to any Participant in the Plan, the Committee may grant one or more reload options (each, a “Reload Option”) to such Participant to purchase for cash or Shares (held for at least six (6) months or such other period to avoid accounting charges against the Company’s earnings) a number of Shares as specified below. A Reload Option shall be exercisable for an amount of Shares equal to (i) the number of Shares delivered by the Optionee to the Company to exercise the Underlying Option, and (ii) to the extent authorized by the Committee, the number of Shares used to satisfy any tax withholding requirement incident to the exercise of the Underlying Option, subject to the availability of Shares under the Plan at the time of such exercise. Any Reload Option may provide for the grant, when exercised, of subsequent Reload Options to the extent and upon such terms and conditions consistent with this Article 6, as the Committee in its sole discretion shall specify at or after the time of grant of such Reload Option. Except as otherwise determined by the Committee, a Reload Option will vest and become exercisable six (6) months after the exercise of an Underlying Option or Reload Option whereby the Participant delivers to the Company Shares held by the Optionee for at least six (6) months in payment of the exercise price and/or tax withholding obligations. Notwithstanding the fact that the Underlying Option may be an “incentive stock option,” a Reload Option is not intended to qualify as an “incentive stock option” under Section 422 of the Code.

6.2 Reload Option Amendment. Each Share Option Agreement shall state whether the Committee has authorized Reload Options with respect to the Underlying Option. Upon the exercise of an Underlying Option or other Reload Option, the Reload Option will be evidenced by an amendment to the underlying Share Option Agreement.

6.3 Reload Option Price. The option exercise price per each Share purchasable under any Reload Option granted under the Plan shall be determined on the date the Underlying Option is exercised and shall be equal to 100% of the Fair Market Value of a Share on such date of grant.

6.4 Term and Exercise. Except as otherwise determined by the Committee, each Reload Option vests and is fully exercisable six months after its grant (i.e., six months after the

corresponding Underlying Option is exercised). The term of each Reload Option shall be equal to the remaining option term of the Underlying Option.

6.5 Termination of Employment. No additional Reload Options shall be granted to an Optionee when Options and/or Reload Options are exercised pursuant to the terms of this Plan following termination of the Optionee's employment unless the Committee, in its sole discretion, shall determine otherwise.

6.6 Applicability of Other Sections. Except as otherwise provided in this Article 6, the provisions of Article 9 applicable to Options shall apply equally to Reload Options.

## **ARTICLE 7 SHARE AWARDS**

7.1 Grant of Share Purchase Award. The term "Share Purchase Award" means the right to purchase Shares of the Company and to pay for such Shares through a loan made by the Company to the Participant (a "Purchase Loan") as set forth in this Article 7. Unless otherwise permitted by law, no executive officer or director of the Company shall be eligible to receive a Share Purchase Award.

7.2 Terms of Purchase Loans. (a) Purchase Loan. Each Purchase Loan shall be evidenced by a promissory note. The term of the Purchase Loan shall be for a period of years, as determined by the Committee, and the proceeds of the Purchase Loan shall be used exclusively by the Participant for purchase of Shares from the Company at a purchase price equal to the Fair Market Value on the date of the Share Purchase Award.

(b) Interest on Purchase Loan. A Purchase Loan shall be non-interest bearing or shall bear interest at whatever rate the Committee shall determine (but not in excess of the maximum rate permissible under applicable law), payable in a manner and at such times as the Committee shall determine. Those terms and provisions as the Committee shall determine shall be incorporated into the promissory note evidencing the Purchase Loan.

(c) Pre-payment of Purchase Loan. A Participant's Purchase Loan can be prepaid at any time, and from time to time, without penalty.

7.3 Security for Loans. (a) Stock Power and Pledge. Purchase Loans granted to Participants shall be secured by a pledge of the Shares acquired pursuant to the Share Purchase Award. Such pledge shall be evidenced by a pledge agreement (the "Pledge Agreement") containing such terms and conditions as the Committee shall determine. The share certificates for the Shares purchased by a Participant pursuant to a Share Purchase Award shall be issued in the Participant's name, but shall be held by the Company as security for repayment of the Participant's Purchase Loan together with a stock power executed in blank by the Participant (the execution and delivery of which by the Participant shall be a condition to the issuance of the Share Purchase Award). Unless otherwise determined by the Committee, the Participant shall be entitled to exercise all rights applicable to such Shares, including, but not limited to, the right to vote such Shares and the right to receive dividends and other distributions made with respect to such Shares. When the Purchase Loan and any accrued but unpaid interest thereon has been repaid or otherwise satisfied in full, the Company shall deliver to the Participant the share

certificates for the Shares purchased by a Participant under the Share Purchase Award. Purchase Loans shall be recourse or non-recourse with respect to a Participant, as determined by the Committee.

(b) *Release and Delivery of Share Certificates During the Term of the Purchase Loan.*

The Company shall release and deliver to each Participant certificates for Shares purchased by a Participant pursuant to a Share Purchase Award, in such amounts and on such terms and conditions as the Committee shall determine, which shall be set forth in the Pledge Agreement.

(c) *Release and Delivery of Share Certificates Upon Repayment of the Purchase Loan.*

The Company shall release and deliver to each Participant certificates for the Shares purchased by the Participant under the Share Purchase Award and then held by the Company, provided the Participant has paid or otherwise satisfied in full the balance of the Purchase Loan and any accrued but unpaid interest thereon. In the event the balance of the Purchase Loan is not repaid, forgiven or otherwise satisfied within 90 days after (i) the date repayment of the Purchase Loan is due (whether in accordance with its term, by reason of acceleration or otherwise), or (ii) such longer time as the Committee, in its discretion, shall provide for repayment or satisfaction, the Company shall retain those Shares then held by the Company in accordance with the Pledge Agreement.

(d) *Recourse Purchase Loans.* Notwithstanding Sections 7.3(a), (b) and (c) above, in the case of a recourse Purchase Loan, the Committee may make a Purchase Loan on such terms as it determines, including without limitation, not requiring a pledge of the acquired Shares.

7.4 *Termination of Employment.* (a) *Termination of Employment by Death, Disability or by the Company Without Cause; Change of Control.* In the event of a Participant's termination of employment by reason of death, "disability" or by the Company without "cause," or in the event of a "change of control," the Committee shall have the right (but shall not be required) to forgive the remaining unpaid amount (principal and interest) of the Purchase Loan in whole or in part as of the date of such occurrence. "Change of Control," "disability" and "cause" shall have the respective meanings as set forth in the promissory note evidencing the Purchase Loan.

(b) *Termination of Employment.* Subject to Section 7.4(a) above, in the event of a Participant's termination of employment for any reason, the Participant shall repay to the Company the entire balance of the Purchase Loan and any accrued but unpaid interest thereon, which amounts shall become immediately due and payable, unless otherwise determined by the Committee.

7.5 *Restrictions on Transfer.* No Share Purchase Award or Shares purchased through such an Award and pledged to the Company as collateral security for the Participant's Purchase Loan (and accrued and unpaid interest thereon) may be otherwise pledged, sold, assigned or transferred (other than by will or by the laws of descent and distribution).

**ARTICLE 8**  
**SHARE AWARDS**

8.1 *Restricted Share Awards.* (a) A grant of Shares made pursuant to Sections 8.1 and 8.2 is referred to as a “Restricted Share Award.” The Committee may grant to any Participant an amount of Shares in such manner, and subject to such terms and conditions relating to vesting, forfeitability and restrictions on delivery and transfer (whether based on performance standards, periods of service or otherwise) as the Committee shall establish (such Shares, “Restricted Shares”). The terms of any Restricted Share Award granted under this Plan shall be set forth in a written agreement (a “Restricted Share Agreement”) which shall contain provisions determined by the Committee and not inconsistent with this Plan. The provisions of Restricted Share Awards need not be the same for each Participant receiving such Awards.

(b) *Issuance of Restricted Shares.* As soon as practicable after the date of grant of a Restricted Share Award by the Committee, the Company shall cause to be transferred on the books of the Company Shares registered in the name of the Company, as nominee for the Participant, evidencing the Restricted Shares covered by the Award; provided, however, such Shares shall be subject to forfeiture to the Company retroactive to the date of grant if a Restricted Share Agreement delivered to the Participant by the Company with respect to the Restricted Shares covered by the Award is not duly executed by the Participant and timely returned to the Company. All Restricted Shares covered by Awards under this Article 8 shall be subject to the restrictions, terms and conditions contained in the Plan and the Restricted Share Agreement entered into by and between the Company and the Participant. Until the lapse or release of all restrictions applicable to an Award of Restricted Shares, the share certificates representing such Restricted Shares shall be held in custody by the Company or its designee.

(c) *Shareholder Rights.* Beginning on the date of grant of the Restricted Share Award and subject to execution of the Restricted Share Agreement as provided in Sections 8.1(a) and (b), unless the Restricted Share Agreement provides otherwise, the Participant shall become a shareholder of the Company with respect to all Shares subject to the Restricted Share Agreement and shall have all of the rights of a shareholder, including, but not limited to, the right to vote such Shares and the right to receive distributions made with respect to such Shares; provided, however, that any Shares distributed as a dividend or otherwise with respect to any Restricted Shares as to which the restrictions have not yet lapsed shall be subject to the same restrictions as such Restricted Shares and shall be represented by book entry and held as prescribed in Section 8.1(b).

(d) *Restriction on Transferability.* None of the Restricted Shares may be assigned or transferred (other than by will or the laws of descent and distribution), pledged or sold prior to lapse or release of the restrictions applicable thereto.

(e) *Delivery of Shares Upon Release of Restrictions.* Upon expiration or earlier termination of the forfeiture period without a forfeiture and the satisfaction of or release from any other conditions prescribed by the Committee, the restrictions applicable to the Restricted Shares shall lapse. As promptly as administratively feasible thereafter, subject to the requirements of Section 10.1, the Company shall deliver to the Participant or, in case of the Participant’s death, to the Participant’s beneficiary, one or more stock certificates for the

appropriate number of Shares, free of all such restrictions, except for any restrictions that may be imposed by law.

8.2 Terms of Restricted Shares. (a) Forfeiture of Restricted Shares. Subject to Section 8.2(b), all Restricted Shares shall be forfeited and returned to the Company and all rights of the Participant with respect to such Restricted Shares shall terminate unless the Participant continues in the service of the Company as an employee (or Director, consultant or advisor, as the case may be) until the expiration of the forfeiture period for such Restricted Shares and satisfies any and all other conditions set forth in the Restricted Share Agreement. The Committee in its sole discretion, shall determine the forfeiture period (which may, but need not, lapse in installments) and any other terms and conditions applicable with respect to any Restricted Share Award and the Committee has the discretion to modify the terms and conditions of a Restricted Share Award as long as the rights of the Participant are not impaired.

(b) Waiver of Forfeiture Period. Notwithstanding anything contained in this Article 8 to the contrary, the Committee may, in its sole discretion and subject to the limitations imposed under Code Section 162(m) and the Treasury Regulations thereunder in the case of a Restricted Share Award intended to comply with the performance-based compensation exception under Code Section 162(m), waive the forfeiture period and any other conditions set forth at grant in any Restricted Share Agreement under appropriate circumstances (including the death, disability or retirement of the Participant or a material change in circumstances arising after the date of an Award) as determined by the Committee in its sole discretion and subject to such terms and conditions (including forfeiture of a proportionate number of the Restricted Shares) as the Committee shall deem appropriate. In no event may the Committee waive the forfeiture period or any other conditions set forth in the grant with respect to an Award intended to comply with Code Section 162(m) in the event of retirement or any other circumstance which would cause the Award to lose its status under Code Section 162(m) as performance-based on grant.

8.3 Other Share-Based Awards. The Committee is authorized to grant other Share-based awards that are payable in, valued in whole or in part by reference to, or otherwise based on or related to Shares, including but not limited to, Shares awarded purely as a bonus and not subject to any restrictions or conditions, Shares in payment of the amounts due under an incentive or performance plan sponsored or maintained by the Company or any parent, subsidiary or affiliate of the Company, share appreciation rights (in tandem with Options), stock equivalent units, and Awards valued by reference to book value of Shares. Subject to the provisions of this Plan, the Committee shall have authority to determine the persons to whom and the time or times at which such Awards shall be made, the number of Shares to be awarded pursuant to or referenced by such Awards, and all other conditions of the Awards. Grants of other Share-based awards may be subject to such conditions, restrictions and contingencies as the Committee may determine which may include, but are not limited to, continuous service with the Company or any parent, subsidiary or affiliate of the Company and/or the achievement of performance goals. Notwithstanding the foregoing, all other Share-based awards granted under this Section 8.3 will be structured so that such Awards either are not “deferred compensation” for purposes of Code Section 409A or comply with Code Section 409A.

8.4 Objective Performance Goals, Formulae or Standards. If the grant of Restricted Shares or other Share-based awards or the lapse of restrictions or vesting of Restricted Shares or

other Share-based awards is based on the attainment of performance goals, the Committee shall establish the performance goals and the applicable vesting percentage of the Restricted Share Award or other Share-based award applicable to each Participant or class of Participants in writing prior to the beginning of the applicable fiscal year or at such later date as otherwise determined by the Committee and while the outcome of the performance goals are substantially uncertain. Such performance goals may incorporate provisions for disregarding (or adjusting for) changes in accounting methods, corporate transactions (including, without limitation, dispositions and acquisitions) and other similar type events or circumstances. With regard to a Restricted Share Award or other Share-based award that is intended to comply with Section 162(m) of the Code, to the extent any such provision would create impermissible discretion under Section 162(m) of the Code or otherwise violate Section 162(m) of the Code, such provision shall be of no force or effect. The applicable performance goals shall be based on one or more of the Performance Criteria set forth in Exhibit A hereto. Other performance goals may be used to the extent such goals satisfy Section 162(m) of the Code or the Award is not intended to satisfy the requirements of Section 162(m) of the Code.

8.5 Annual Limitation on Grants of Shares. Subject to adjustments pursuant to the provisions of Section 9.9 hereof, the maximum number of Shares subject to specified performance goals intended to satisfy the requirements of Section 162(m) of the Code and in accordance with Section 8.4 hereof that may be granted as Restricted Shares to any employee or subject to any other Share-based awards to any employee during any fiscal year of the Company shall be 4,500,000 Shares.

## **ARTICLE 9 GENERALLY APPLICABLE PROVISIONS**

9.1 Option Period. Subject to Section 3.1(b), the period for which an Option is exercisable shall be set by the Committee and shall not exceed ten (10) years from the date such Option is granted unless approved by the Company's stockholders. After the Option is granted, the option period may not be reduced, subject to expiration due to termination of employment.

9.2 Fair Market Value. If the Shares are listed or admitted to trading on a securities exchange registered under the Exchange Act, the "Fair Market Value" of a Share as of a specified date shall mean the average of the high and low price of the shares for the day immediately preceding the date as of which Fair Market Value is being determined (or if there was no sale on such date, on the last preceding date on which any reported sale occurred) reported on the principal securities exchange on which the Shares are listed or admitted to trading. If the Shares are not listed or admitted to trading on any such exchange but are traded in the over-the-counter market or traded on any similar system then in use, the Fair Market Value of a Share shall be the average of the high and low sales price for the day immediately preceding the date as of which the Fair Market Value is being determined (or if there was no reported sale on such date, on the last preceding date on which any reported sale occurred) reported on such system. If the Shares are not listed or admitted to trading on any such exchange and are not traded in the over-the-counter market or traded on any similar system then in use, but are quoted on any similar system then in use, the Fair Market Value of a Share shall be the average of the closing high bid and low asked quotations on such system for the Shares on the date in question. If the Shares are not publicly traded, Fair Market Value shall be determined by the Committee in

its sole discretion using appropriate criteria. An Option shall be considered granted on the date the Committee acts to grant the Option or such later date as the Committee shall specify. Notwithstanding the foregoing, the Fair Market Value of Shares shall, in all events, be determined in accordance with Code Section 409A, and the regulations and other guidance promulgated thereunder.

9.3 Exercise of Options. Vested Options granted under the Plan shall be exercised by the Optionee thereof (or by his or her executors, administrators, guardian or legal representative, or by a Permitted Assignee, as provided in Sections 9.4, 9.6 and 9.7 hereof) as to all or part of the Shares covered thereby, by the giving of written notice of exercise to the Company, specifying the number of Shares to be purchased, accompanied by payment of the full purchase price for the Shares being purchased. Full payment of such purchase price shall be made at the time of exercise and shall be made (i) in cash or by certified check or bank check or wire transfer of immediately available funds, (ii) with the consent of the Committee, unless otherwise prohibited by law, by delivery of a promissory note in favor of the Company upon such terms and conditions as determined by the Committee, (iii) with the consent of Committee, by tendering previously acquired Shares (valued at their Fair Market Value, as determined by the Committee as of the date of tender) that have been owned for a period of at least six (6) months (or such other period to avoid accounting charges against the Company's earnings), or (iv) if Shares are traded on a national securities exchange, the NASDAQ or quoted on a national quotation system sponsored by the National Association of Securities Dealers, Inc. and the Committee authorizes this method of exercise, through the delivery of irrevocable instructions to a broker approved by the Committee to deliver promptly to the Company an amount equal to the purchase price, or (v) with the consent of the Committee, any combination of (i), (ii), (iii) and (iv). In connection with a tender of previously acquired Shares pursuant to clause (iii) above, the Committee, in its sole discretion, may permit the Optionee to constructively exchange Shares already owned by the Optionee in lieu of actually tendering such Shares to the Company, provided that adequate documentation concerning the ownership of the Shares to be constructively tendered is furnished in a form satisfactory to the Committee. The notice of exercise, accompanied by such payment, shall be delivered to the Company at its principal business office or such other office as the Committee may from time to time direct, and shall be in such form, containing such further provisions consistent with the provisions of the Plan, as the Committee may from time to time prescribe. In no event may any Option granted hereunder be exercised for a fraction of a Share. The Company shall, subject to Section 10.4 herein, effect the transfer of Shares purchased pursuant to an Option as soon as practicable, and, within a reasonable time thereafter, such transfer shall be evidenced on the books of the Company. No person exercising an Option shall have any of the rights of a holder of Shares subject to an Option until certificates for such Shares shall have been issued following the exercise of such Option. No adjustment shall be made for cash dividends or other rights for which the record date is prior to the date of such issuance.

9.4 Non-Transferability. Except as otherwise specifically provided herein, no Award shall be transferable by the Participant otherwise than by will or by the laws of descent and distribution. All Options shall be exercisable, during the Participant's lifetime, only by the Participant. Any attempt to transfer any Award, except as specifically provided herein, shall be void, and no such Award shall in any manner be subject to the debts, contracts, liabilities, engagements or torts of any person who shall be entitled to such Award, nor shall it be subject to

attachment or legal process for or against such person. Notwithstanding the foregoing, the Committee may determine at the time of grant or thereafter that an Award (other than (x) an Option that is intended to be an incentive stock option, (y) a share appreciation right covered by Section 5.2(d)(i) and (z) a Restricted Share Award) that is otherwise not transferable pursuant to this Section 9.4 is transferable to a Family Member (defined below) in whole or in part and in such circumstances, and under such conditions as specified by the Committee. An Award that is transferred to a Family Member pursuant to the preceding sentence (i) may not be subsequently transferred otherwise than by will or by the laws of descent and distribution and (ii) remains subject to the terms of this Plan and the Award agreement. "Family Member" means, solely to the extent provided for in Securities Act Form S-8, any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the employee's household (other than a tenant or employee), a trust in which these persons have more than 50% of the beneficial interest, a foundation in which these persons (or the employee) control the management of assets, and any other entity in which these persons (or the employee) own more than 50% of the voting interests or as otherwise defined in Securities Act Form S-8.

9.5 Termination of Employment. Unless the Committee otherwise determines, in the event of the termination of employment with the Company or any parent, subsidiary or affiliate of the Company of an Optionee who is an employee or the termination or separation from service with the Company or any parent, subsidiary or affiliate of the Company of an advisor, consultant or a Director (who is an Optionee) for any reason (other than death or disability as provided below), any Option(s) granted to such Optionee (or its Permitted Assignee) under this Plan and not previously exercised or expired, to the extent vested on the date of such termination or separation, shall be exercisable as of such termination for a period not to exceed three (3) months after the date of such termination or separation, provided, however, that in no instance may the term of the Option, as so extended, exceed the lesser of ten (10) years from the date of grant or the original expiration date of the Option.

9.6 Death. In the event an Optionee dies while employed by the Company or any parent, subsidiary or affiliate of the Company or while serving as a Director, advisor or consultant of the Company or any parent, subsidiary of the Company, as the case may be, any Option(s) held by such Optionee (or its Permitted Assignee) and not previously expired or exercised shall, to the extent exercisable on the date of death, be exercisable by the estate of such Optionee or by any person who acquired such Option by bequest or inheritance, or by the Permitted Assignee at any time within one year after the death of the Optionee, unless earlier terminated pursuant to its terms, provided, however, that in no instance may the term of the Option, as so extended, exceed the lesser of ten (10) years from the date of grant or the original expiration date of the Option.

9.7 Disability. In the event of the termination of employment with the Company or any parent, subsidiary or affiliate of the Company of an Optionee or separation from service with the Company or any parent, subsidiary or affiliate of the Company of an Optionee who is a Director, advisor or consultant of the Company or any parent, subsidiary or affiliate of the Company due to total disability, the Optionee, or his guardian or legal representative, or a Permitted Assignee shall have the unqualified right to exercise any Option that has not expired or

been previously exercised and that the Optionee was eligible to exercise as of the first date of total disability (as determined by the Committee), at any time within one year after such termination or separation, unless earlier terminated pursuant to its terms, provided, however, that in no instance may the term of the Option, as so extended, exceed the lesser of ten (10) years from the date of grant or the original expiration date of the Option. The term “total disability” shall, for purposes of this Plan, be defined in the same manner as such term is defined in Section 22(e)(3) of the Code.

9.8 Terms of Grant. Notwithstanding anything in Section 9.5, 9.6 or 9.7 to the contrary, the Committee may grant an Option under such terms and conditions as may be provided in the Share Option Agreement given to the Optionee and, subject to Section 4.3(b), the Committee has the discretion to modify the terms and conditions of an Option after grant as long as no rights of the Participant are impaired, provided, however, that in no instance may the term of the Option, as so extended, exceed the lesser of ten (10) years from the date of grant or the original expiration date of the Option.

9.9 Adjustments. To prevent the dilution or enlargement of benefits or potential benefits intended to be made available under the Plan, in the event of any corporate transaction or event such as a stock dividend, extraordinary dividend or other similar distribution (whether in the form of cash, Shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Shares or other securities, the issuance of warrants or other rights to purchase Shares or other securities, or other similar corporate transaction or event affecting the Shares with respect to which Awards have been or may be issued under the Plan (any such transaction or event, a “Transaction”), then the Committee shall, in such manner as the Committee deems equitable, (A) adjust (i) the number and type of Shares that thereafter may be made the subject of Awards, (ii) the number and type of Shares subject to outstanding Awards, and (iii) the grant or exercise price with respect to any Award (any such adjustment, an “Antidilution Adjustment”); provided, in each case, that with respect to “incentive stock options,” no such adjustment shall be authorized to the extent that such adjustment would cause such options to violate Section 422(b) of the Code or any successor provision (unless otherwise agreed by the Committee and the holder of such option); and provided further, that the number of Shares subject to any Award denominated in Shares shall always be a whole number; or (B) cause any Award outstanding as of the effective date of the Transaction to be cancelled in consideration of a cash payment or alternate Award (whether from the Company or another entity that is a party to the Transaction) or a combination thereof made to the holder of such cancelled Award substantially equivalent in value to the fair market value of such cancelled Award. With respect to each adjustment contemplated by the foregoing sentence, no such adjustment shall be authorized to the extent that such adjustment would cause an Award to violate the provisions of Section 409A of the Code (unless otherwise agreed by the Committee and the holder of such Award). The determination of fair market value shall be made by the Committee in its sole discretion. Any adjustments made by the Committee shall be binding on all Participants. If the Committee determines that an adjustment in accordance with the provisions of this Section 9.9 would not be fully consistent with the purposes of the Plan or the purposes of the outstanding Awards under the Plan, the Committee may make such other adjustments, if any, that the Committee reasonably determines are consistent with the purposes of the Plan and/or the affected Awards.

9.10 Amendment and Modification of the Plan. The Compensation Committee of the Board of Directors of the Company may, from time to time, alter, amend, suspend or terminate the Plan as it shall deem advisable, subject to any requirement for shareholder approval imposed by applicable law, including without limitation Sections 162(m) and 422 of the Code, or any rule of any stock exchange or quotation system on which Shares are listed or quoted; provided that such Compensation Committee may not amend the Plan, without the approval of the Company's shareholders, to increase the number of Shares that may be the subject of Options under the Plan (except for adjustments pursuant to Section 9.9 hereof). In addition, no amendments to, or termination of, the Plan shall in any way impair the rights of an Optionee or a Participant (or a Permitted Assignee thereof) under any Award previously granted without such Optionee's or Participant's consent.

9.11 Validity of Awards. The validity of any Award or grant of Options made pursuant to this Plan shall remain in full force and effect and shall not be affected by the compliance or noncompliance with Section 162(m) of the Code or Rule 16b-3 of the Exchange Act.

9.12 Cancellation. No outstanding Award may be cancelled in exchange for a new Award, unless otherwise approved by the Company's stockholders. Notwithstanding the foregoing, no Award shall be assumed or substituted under this Plan if such action would cause an Award not otherwise "deferred compensation" within the meaning of Code Section 409 to become or create "deferred compensation" within the meaning of Code Section 409A.

## **ARTICLE 10 MISCELLANEOUS**

10.1 Tax Withholding. The Company or any parent, subsidiary or affiliate of the Company shall have the right to make all payments or distributions made pursuant to the Plan to an Optionee or Participant (or a Permitted Assignee thereof) net of any applicable federal, state and local taxes as it determines in its discretion are required to be paid as a result of the grant of any Award, exercise of an Option or stock appreciation rights or any other event occurring pursuant to this Plan. The Company or any parent, subsidiary or affiliate of the Company shall have the right to withhold from wages or other payments otherwise payable to such Optionee or Participant (or a Permitted Assignee thereof) such withholding taxes as it determines in its discretion may be required by law, or to otherwise require the Optionee or Participant (or a Permitted Assignee thereof) to pay such withholding taxes. If the Optionee or Participant (or a Permitted Assignee thereof) shall fail to make such tax payments as are required, the Company or any parent, subsidiary or affiliate of the Company shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to such Optionee or Participant or to take such other action as may be necessary to satisfy such withholding obligations. In satisfaction of the requirement to pay required withholding taxes, the Optionee or Participant (or Permitted Assignee) may make a written election, which may be accepted or rejected in the discretion of the Committee, to have withheld a portion of the Shares then issuable to the Optionee (or Permitted Assignee) pursuant to the Plan, having an aggregate Fair Market Value equal to the required withholding taxes.

10.2 Right of Discharge Reserved. Nothing in the Plan nor the grant of an Award hereunder shall confer upon any employee, Director, consultant, advisor or other individual the

right to continue in the employment or service of the Company or any parent, subsidiary or affiliate of the Company or affect any right that the Company or any parent, subsidiary or affiliate of the Company may have to terminate the employment or service of (or to demote or to exclude from future Awards under the Plan) any such employee, Director, consultant, advisor or other individual at any time for any reason. Except as specifically provided by the Committee, the Company shall not be liable for the loss of existing or potential profit with respect to an Award in the event of termination of an employment or other relationship even if the termination is in violation of an obligation of the Company or any parent, subsidiary or affiliate of the Company to the Optionee or Participant.

10.3 Unfunded Plan. Unless otherwise determined by the Committee, the Plan shall be unfunded and shall not create (or be construed to create) a trust or a separate fund or funds. The Plan shall not establish any fiduciary relationship between the Company or any parent, subsidiary or affiliate of the Company and any Optionee, Participant or other person. To the extent any Optionee or Participant holds any rights by virtue of any grant or award made under the Plan, such rights shall constitute general unsecured liabilities of the Company or any parent, subsidiary or affiliate of the Company and shall not confer upon any participant any right, title, or interest in any assets of the Company or any parent, subsidiary or affiliate of the Company.

10.4 Legend. All certificates for Shares delivered under this Plan shall be subject to such stock transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations and other requirements of the Securities and Exchange Commission, any stock exchange upon which the Shares are then listed or any national securities association system upon whose system the Shares are then quoted, any applicable Federal or state securities law, and any applicable corporate law, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.

10.5 Listing and Other Conditions. (a) As long as the Shares are listed on a national securities exchange or system sponsored by a national securities association, the issue of any Shares pursuant to an Award shall be conditioned upon such Shares being listed on such exchange or system. The Company shall have no obligation to deliver such Shares unless and until such Shares are so listed; provided, however, that any delay in the delivery of such Shares shall be based solely on a reasonable business decision and the right to exercise any Option with respect to such Shares shall be suspended until such listing has been effected.

(b) If at any time counsel to the Company shall be of the opinion that any sale or delivery of Shares pursuant to any Award is or may in the circumstances be unlawful or result in the imposition of excise taxes on the Company under the statutes, rules or regulations of any applicable jurisdiction, the Company shall have no obligation to make such sale or delivery, or to make any application or to effect or to maintain any qualification or registration under the Securities Act of 1933, as amended, or otherwise with respect to Shares or Award, and the right to any Award shall be suspended until, in the opinion of said counsel, such sale or delivery shall be lawful or will not result in the imposition of excise taxes on the Company.

(c) Upon termination of any period of suspension under this Section 10.5, any Award affected by such suspension which shall not then have expired or terminated shall be reinstated as to all shares available before such suspension and as to shares which would

otherwise have become available during the period of such suspension, but no such suspension shall extend the term of any Option.

(d) A Participant shall be required to supply the Company with any certificates, representations and information that the Company requests and otherwise cooperate with the Company in obtaining any listing, registration, qualification, exemption, consent or approval the Company deems necessary or appropriate.

10.6 Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Committee shall notify each Optionee and Participant as soon as practicable prior to the effective date of such proposed transaction. The Committee in its sole discretion may permit an Optionee to exercise an Option until ten (10) days prior to such transaction with respect to all vested and exercisable Shares covered thereby and with respect to such number of unvested Shares as the Committee shall determine. In addition, the Committee may provide that any forfeiture provision or Company repurchase option applicable to any Restricted Share Award shall lapse as to such number of Shares as the Committee shall determine, contingent upon the occurrence of the proposed dissolution or liquidation at the time and in the manner contemplated. To the extent an Option has not been previously exercised, the Option shall terminate automatically immediately prior to the consummation of the proposed action. To the extent a forfeiture provision applicable to a Restricted Share Award has not been waived by the Committee, the related Restricted Share Award shall be forfeited automatically immediately prior to the consummation of the proposed action.

10.7 Severability. If any provision of the Plan shall be held unlawful or otherwise invalid or unenforceable in whole or in part, such unlawfulness, invalidity or unenforceability shall not affect any other provision of the Plan or part thereof, each of which shall remain in full force and effect. If the making of any payment or the provision of any other benefit required under the Plan shall be held unlawful or otherwise invalid or unenforceable, such unlawfulness, invalidity or unenforceability shall not prevent any other payment or benefit from being made or provided under the Plan, and if the making of any payment in full or the provision of any other benefit required under the Plan in full would be unlawful or otherwise invalid or unenforceable, then such unlawfulness, invalidity or unenforceability shall not prevent such payment or benefit from being made or provided in part, to the extent that it would not be unlawful, invalid or unenforceable, and the maximum payment or benefit that would not be unlawful, invalid or unenforceable shall be made or provided under the Plan.

10.8 Gender and Number. In order to shorten and to improve the understandability of the Plan document by eliminating the repeated usage of such phrases as “his or her” and any masculine terminology herein shall also include the feminine, and the definition of any term herein in the singular shall also include the plural except when otherwise indicated by the context.

10.9 Effective Date of Plan; Termination of Plan. The Plan shall be effective on the date of the approval of the Plan at a meeting of the Company’s stockholders by the holders of a majority of the shares voting thereon, provided such approval is obtained within twelve (12) months after the date of adoption of the Plan by the Board of Directors. Awards may be granted under the Plan at any time and from time to time after the effective date of the Plan and on or

prior to August 21, 2011, on which date the Plan will expire except as to Awards and related share appreciation rights then outstanding under the Plan. Such outstanding Awards and stock appreciation rights shall remain in effect until they have been exercised or terminated, or have otherwise expired.

10.10 Nature of Payments. All Awards made pursuant to the Plan are in consideration of services performed for the Company and any parent, subsidiary or affiliate of the Company. Any income or gain realized pursuant to Awards under the Plan and any share appreciation rights constitutes a special incentive payment to the Optionee, Participant or Holder and shall not be taken into account, to the extent permissible under applicable law, as compensation for purposes of any of the employee benefit plans of the Company or any parent, subsidiary or affiliate of the Company, except as may be determined by the Committee or by the Directors or directors of the applicable parent, subsidiary or affiliate of the Company.

10.11 Captions. The captions in this Plan are for convenience of reference only, and are not intended to narrow, limit or affect the substance or interpretation of the provisions contained herein.

10.12 Successors and Assigns. This Plan shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Company and the Participants.

10.13 Governing Law. The Plan and all determinations made and actions taken thereunder, to the extent not otherwise governed by the Code or the laws of the United States, shall be governed by the laws of the State of Delaware and construed accordingly.

10.14 Code Section 409A. All provisions of this Plan shall be interpreted in a manner consistent with Code Section 409A, and the regulations and other guidance promulgated thereunder. Notwithstanding the preceding, the Company makes no representations concerning the tax consequences of participation in the Plan under Code Section 409A or any other federal, state or local tax law. Tax consequences will depend, in part, upon the application of relevant tax law, including Code Section 409A, to the relevant facts and circumstances. Participant should consult a competent and independent tax advisor regarding the tax consequences of this Plan.

## EXHIBIT A

### PERFORMANCE CRITERIA

Subject to the last sentence of Section 8.4 of the Plan, performance goals established for purposes of conditioning the grant of an Award of Restricted Shares or other Share-based awards based on performance or the vesting of performance-based Awards of Restricted Shares shall be based on one or more of the following performance criteria ("Performance Criteria"): (i) the attainment of certain target levels of, or a specified percentage increase in, revenues, income before income taxes and extraordinary items, net income, earnings before income tax, earnings before interest, taxes, depreciation and amortization, or a combination of any or all of the foregoing; (ii) the attainment of certain target levels of, or a percentage increase in, after-tax or pre-tax profits including, without limitation, that attributable to continuing and/or other operations; (iii) the attainment of certain target levels of, or a specified increase in, operational cash flow; (iv) the achievement of a certain level of, reduction of, or other specified objectives with regard to limiting the level of increase in, all or a portion of, the Company's bank debt or other long-term or short-term public or private debt or other similar financial obligations of the Company, which may be calculated net of such cash balances and/or other offsets and adjustments as may be established by the Committee; (v) the attainment of a specified percentage increase in earnings per share or earnings per share from continuing operations; (vi) the attainment of certain target levels of, or a specified increase in return on capital employed or return on invested capital; (vii) the attainment of certain target levels of, or a percentage increase in, after-tax or pre-tax return on stockholders' equity; (viii) the attainment of certain target levels of, or a specified increase in, economic value added targets based on a cash flow return on investment formula; (ix) the attainment of certain target levels in the fair market value of the shares of the Company's Shares and (x) the growth in the value of an investment in the Company's Shares assuming the reinvestment of dividends. For purposes of item (i) above, "extraordinary items" shall mean all items of gain, loss or expense for the fiscal year determined to be extraordinary or unusual in nature or infrequent in occurrence or related to a corporate transaction (including, without limitation, a disposition or acquisition) or related to a change in accounting principle, all as determined in accordance with standards established by Opinion No. 30 of the Accounting Principles Board.

In addition, such Performance Criteria may be based upon the attainment of specified levels of Company (or affiliate, division or other operational unit of the Company) performance under one or more of the measures described above relative to the performance of other real estate investment trusts. To the extent permitted under Code Section 162(m) (including, without limitation, compliance with any requirements for stockholder approval) and Code Section 409A, the Committee may: (i) designate additional business criteria on which the Performance Criteria may be based or (ii) adjust, modify or amend the aforementioned business criteria.

**AMENDED AND RESTATED**  
**EXECUTIVE EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (this "Agreement") is entered into between R. Richard Fontaine ("Executive") and GameStop Corp. (the "Company"), collectively referred to as the "Parties," with an "Original Effective Date" of April 11, 2005 and is amended and restated as of the 31<sup>st</sup> day of December, 2008.

The Company has administered this Agreement in good faith compliance with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended ("Code"), and the regulations and other guidance promulgated thereunder, and the Parties wish to amend this employment agreement to comply with the requirements of Code Section 409A. Therefore, this Agreement is amended and restated to read as follows:

1. **Executive's Position/Duties.** During the term of this Agreement, Executive will be employed as the Executive Chairman of the Company, and shall have all of the duties and responsibilities of that position. Executive shall be considered a key employee of the Company and shall be entitled to all the Company benefits afforded to key employees. Executive agrees to dedicate all of his working time (during normal working hours other than during excused absences such as for illness or vacation), skill and attention to the business of the Company, agrees to remain loyal to the Company, and not to engage in any conduct that creates a conflict of interest to, or damages the reputation of, the Company. Executive shall abide by the Company's Code of Ethics and Code of Ethics for Senior Financial Officers.

2. **Term of Employment.** Executive's employment under this Agreement will commence on the Original Effective Date, and will continue for a period of three years, unless terminated earlier in accordance with the provisions of this Agreement. At the expiration (but not earlier termination) of the term (including any renewal term), the term of this Agreement shall automatically renew for an additional period of one year, unless either party has given the other party written notice of non-renewal at least six months prior to such expiration.

3. **Compensation.**

(a) **Base Salary.** During the term of this Agreement, the Company shall provide Executive with a base salary of no less than six hundred fifty thousand dollars (\$650,000.00) per year, paid in accordance with the Company's normal payroll policies ("Base Salary").

( b ) **Bonuses/Distributions.** Each year during the term of this Agreement, the Company shall provide Executive with a bonus based on the formula and targets established under and in accordance with the Company's Supplemental Compensation Plan. Executive may receive additional bonuses at the discretion of the Board of Directors of the Company (the "Board").

( c ) **Benefits.** Executive shall be entitled to all benefits, including, but not limited to, stock and stock option benefits, insurance programs, pension plans, vacation, sick leave, expense accounts, and retirement benefits, as afforded other management personnel or as determined by the Board.

( d ) **Expenses.** The Company shall reimburse Executive for reasonable expenses incurred in the performance of his duties and services hereunder and in furtherance of the business of the Company, in accordance with the policies and procedures established by the Company.

( e ) **Reimbursement of Expenses.** Notwithstanding any provision in this Section 3 to the contrary, no expenses incurred after the term of this Agreement shall be subject to reimbursement, except to the extent provided under this Section 3(e). The amount of expenses eligible for reimbursement during a year shall not affect the expenses eligible for reimbursement in any other year. Reimbursement of an eligible expense shall be made in accordance with the Company's policies and practices and as otherwise provided herein, provided that in no event shall reimbursement be made after the last day of the year following the year in which the expense was incurred. The right to reimbursement is not subject to liquidation or exchange for another benefit.

**4. Termination of Employment.** Executive's employment with the Company may be terminated as follows:

( a ) **Death.** In the event of Executive's death, Executive's employment will be terminated immediately.

( b ) **Disability.** In the event of Executive's Disability, as defined below, Executive's employment will be terminated immediately. "Disability" shall mean a written determination by a physician mutually agreeable to the Company and Executive (or, in the event of Executive's total physical or mental disability, Executive's legal representative) that Executive is physically or mentally unable to perform his duties of Executive Chairman under this Agreement and that such disability can reasonably be expected to continue for a period of six consecutive months or for shorter periods aggregating 180 days in any 12-month period.

( c ) **Termination by the Company for Cause.** The Company shall be entitled to terminate Executive's employment at any time if it has "Cause," which shall mean any of the following: (i) conviction of, or plea of nolo contendere to, a felony or any crime involving fraud or dishonesty; (ii) willful misconduct that results in a material and demonstrable damage to the business or reputation of the Company; (iii) breach by Executive of any of the covenants contained in Sections 8, 10(c), 10(d) or 10(e); or (iv) willful refusal by Executive to perform his obligations under this Agreement or the lawful direction of the Board that is not the result of Executive's death, Disability, physical incapacity or Executive's termination of the Agreement, and that is not corrected within thirty (30) days following written notice thereof to Executive by the Company, such notice to state with specificity the nature of the willful refusal.

( d ) **Without Cause.** Either the Company or Executive may terminate Executive's employment at any time without cause upon written notice.

( e ) **Termination by Executive with Good Reason.** Executive shall be entitled to terminate his employment within 12 months after any of the following events (each of which shall constitute "Good Reason"):

- (i) a material diminution in Executive's compensation;
- (ii) a material diminution in Executive's authority, duties, or responsibilities; or

(iii) the Company requires Executive to move to another location of the Company or any affiliate of the Company and the distance between Executive's former residence and new job site is at least 50 miles greater than the distance between Executive's former residence and former job site.

Notwithstanding the foregoing, Executive shall notify Company in writing if he believes Good Reason exists. Such notice shall set forth in reasonable detail why Executive believes Good Reason exists and shall be provided to the Company within a period not to exceed 90 days of the initial existence of the condition alleged to give rise to Good Reason, upon the notice of which the Company shall have a period of 30 days during which it may remedy the condition.

(f) **Termination by Executive Following a Change in Control.** Following a Change in Control of the Company, Executive shall be entitled to terminate his employment within 30 days following the later of the end of the calendar year within which such Change in Control occurs or the end of the taxable year of the Company within which such Change in Control occurs (such date, the "CIC Termination Date"). For purposes of this Agreement, a "Change in Control" of the Company shall be deemed to have occurred upon the occurrence of one of the following events, provided such event constitutes a change in control under Section 409A of the Code and the regulations and other guidance issued thereunder::

(i) Any one person or more than one person acting as a group (as defined in accordance with Section 409A of the Code and the regulations and other guidance issued thereunder), acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes greater than fifty percent (50%) of the total fair market value or total voting power of the stock of the Company;

(ii) Any one person or more than one person acting as a group (as defined in accordance with Section 409A of the Code and the regulations and other guidance issued thereunder), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the Company possessing 30% or more of the total voting power of the stock of such Company; or a majority of the individuals constituting the Board is replaced during any 12-month period by members whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election; or

(iii) Any one person or more than one person acting as a group (as defined in accordance with Section 409A of the Code and the regulations and other guidance issued thereunder), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 40% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or

acquisitions. For this purpose, gross fair market value means the value of the assets of the Company or the value of the assets being disposed of determined without regard to any liabilities associated with such assets.

## **5. Compensation and Benefits Upon Termination.**

(a) If Executive's employment is terminated by reason of death or Disability, the Company shall pay Executive's Base Salary, at the rate then in effect, in accordance with the payroll policies of the Company, through the date of Executive's death or Disability (in the event of Executive's death, the payments will be made to Executive's beneficiaries or legal representatives) and Executive shall not be entitled to any further Base Salary or any applicable bonus, benefits or other compensation for that year or any future year, except as may be provided in an applicable benefit plan or program, or to any severance compensation of any kind, nature or amount.

(b) If Executive's employment is terminated by Executive (i) without Good Reason or (ii) other than by the CIC Termination Date following a Change in Control; or by the Company for Cause, the Company will pay to Executive all Base Salary, at the rate then in effect, through the date of Executive's termination of active employment and Executive shall not be entitled to any further Base Salary or any applicable bonus, benefits or other compensation for that year or any future year, except as may be provided in an applicable benefit plan or program, or to any severance compensation of any kind, nature or amount.

(c) If, during the term of this Agreement, (i) Executive terminates his employment for Good Reason, provided that such termination is within 12 months following the initial existence of one or more conditions giving rise to Good Reason; (ii) Executive terminates his employment by the CIC Termination Date following a Change in Control; or (iii) the Company terminates Executive's employment without Cause, the Company will pay to Executive all amounts otherwise payable under this Agreement, at the rate then in effect, through the date of Executive's termination, and the following paragraphs (i) through (vi) shall apply:

( i ) *Base Salary and Payment Schedule.* The Company shall pay Executive an amount equal to the greater of: (A) Executive's Base Salary, at the rate then in effect, otherwise payable through the term of this Agreement; or (B) Executive's Base Salary, at the rate then in effect, for one year. Such payment shall be made to Executive in a lump sum within 30 days following the date of Executive's termination of employment.

( i i ) *Bonus.* The Company shall pay Executive an amount equal to the average of the Executive's last three (3) gross annual bonuses multiplied by the greater of (A) one or (B) the number of years (including any fraction thereof) otherwise remaining through the term of this Agreement. Such payment shall be made to Executive in a lump sum within 30 days following the date of Executive's termination of employment.

( i i i ) *Medical Benefits.* Upon Executive's termination, Executive will be eligible to elect individual and dependent continuation group health and (if applicable) dental coverage, as provided under Section 4980B(f) of the Code ("COBRA"), for the maximum COBRA coverage period available, subject to all conditions and limitations

(including payment of premiums and cancellation of coverage upon obtaining duplicate coverage or Medicare entitlement). If Executive or one or more of Executive's covered dependents is eligible for and elects COBRA coverage, then the Company shall pay the full cost of the COBRA coverage for the eighteen (18) month period following Executive's termination date. Executive (or dependents, as applicable) shall be responsible for paying the full cost of the COBRA coverage (including the two percentage administrative charge) after the earlier of (A) the expiration of eighteen months following Executive's termination date, or (B) eligibility for coverage under another employer's medical plan.

(iv) *Vacation.* Executive shall be entitled to a payment attributable to Base Salary, at the rate then in effect, for unused vacation accrued. Such payment shall be made to Executive in a lump sum within 30 days following the date of Executive's termination of employment.

(v) *Cancellation of Restrictions.* The obligations of Executive under Sections 10(c), 10(d) and 10(e) below shall be immediately terminated and cancelled and be of no further force or effect.

(vi) *Section 280G Limitation.* Notwithstanding anything to the contrary contained herein, in the case of a termination of employment subject to the excise tax under Code Section 280G, or any successor provision thereto, the maximum amount payable pursuant to this Section 5(c) shall be the maximum amount payable to Executive without triggering an excise tax under Code Section 280G, or any successor provision thereto. Any amount eliminated or reduced by application of this subsection to avoid the payment of an excise tax under Code Section 280G shall be made to payments that do not constitute "deferred compensation" within the meaning of Code Section 409A.

## **6. Stock and Options.**

**Release of Stock Restrictions.** The Company hereby agrees and acknowledges that in the event of Executive's death or Disability, or upon the Company's termination of Executive's employment without Cause or Executive's termination of his employment for Good Reason or by the CIC Termination Date following a Change in Control, all restrictions imposed by the Company with respect to all shares of stock and all stock options issued to Executive during his employment with the Company shall lapse and be of no further force or effect; provided, however, that such restrictions shall only lapse and be of no further force or effect to the extent such lapse shall not effect the character of such stock or stock options which are intended to qualify for the performance-based compensation exception to the limitations imposed under Code Section 162(m) as performance-based compensation on grant within the meaning of Code Section 162(m) and the regulations promulgated thereunder. The Company hereby further agrees and acknowledges that all shares of stock issued to Executive have been or will be registered under the Securities Act of 1933, as amended (the "Securities Act"). The Company further agrees to use all best efforts to deliver to Executive as soon as is practicable, certificates registered in Executive's name evidencing all previously unvested shares, which stock certificates shall contain no restrictive legend except as may be required under the Securities Act.

7. **Specified Employee Determination.** Notwithstanding any provision herein to the contrary, in the event that Executive is determined to be a specified employee within the meaning of Code Section 409A under the default provisions established thereunder, for purposes of any payment on termination of employment under this Agreement, payment(s) shall be made or begin, as applicable, on the first payroll date which is more than six months following the date of separation from service (or, if earlier, upon Executive's death), to the extent required to avoid any adverse tax consequences under Code Section 409A.

8. **Confidentiality/Settlement of Existing Rights.**

(a) In order to induce Executive to enter into this Agreement, and in order to enable Executive to provide services on behalf of the Company, during the term of this Agreement, the Company will provide Executive with access to certain trade secrets and confidential or proprietary information belonging to the Company, which may include, but is not limited to, the identities, customs, and preferences of the Company's existing and prospective clients, customers, tenants or vendors; the identities and skills of the Company's employees; the Company's methods, procedures, analytical techniques, and models used in providing products and services, and in pricing or estimating the cost of such products and services; the Company's financial data, business and marketing plans, projections and strategies; customer lists and data; tenant lists and data, vendor lists and data; training manuals, policy manuals, and quality control manuals; software programs and information systems; and other information relating to the development, marketing, and provision of the Company's products, services, and systems (i.e., "Confidential Information"). Executive acknowledges that this Confidential Information constitutes valuable, special and unique property of the Company.

(b) Executive agrees that, except as may be necessary in the ordinary course of performing his duties under this Agreement, Executive shall not, without prior express written consent of the Company (i) use such Confidential Information for Executive's own benefit or for the benefit of another; or (ii) disclose, directly or indirectly, such Confidential Information to any person, firm, corporation, partnership, association, or other entity (except for authorized personnel of the Company) at any time prior or subsequent to the termination or expiration of this Agreement.

(c) By this Agreement, the Company is providing Executive with rights that Executive did not previously have. In exchange for the foregoing and the additional terms agreed to in this Agreement, Executive agrees that all Company Proprietary and Confidential Information learned or developed by Executive during past employment with the Company and all goodwill developed with the Company's clients, customers and other business contacts by Executive during past employment with the Company is now the exclusive property of the Company, and will be used only for the benefit of the Company, whether previously so agreed or not. Executive expressly waives and releases any claim or allegation that he should be able to use client and customer goodwill, specialized Company training, or Confidential Information, that was previously received or developed by Executive while working for the Company for the benefit of any competing person or entity.

9. **Return of Company Property.** Executive acknowledges that all memoranda, notes, correspondence, databases, discs, records, reports, manuals, books, papers, letters, CD Roms,

keys, passwords and access codes, client/customer/vendor/supplier profile data, contracts, orders, and lists, software programs, information and records, and other documentation (whether in draft or final form) relating to the Company's business, and any and all other documents containing Confidential Information furnished to Executive by any representative of the Company or otherwise acquired or developed by him in connection with his association with the Company (collectively, "Recipient Materials") shall at all times be the property of the Company. Within twenty-four (24) hours of the termination of his relationship with the Company, Executive promises to return to the Company any Recipient Materials that are in his possession, custody or control, regardless of whether such Materials are located in Executive's office, automobile, or home or on Executive's business or personal computers. Executive also shall authorize and permit the Company to inspect all computer drives used or maintained by Executive during his employment or consulting at the Company and, if necessary, to permit the Company to delete any Recipient Materials or Proprietary Information contained on such drives.

**10. Protective Covenants.** Executive agrees that the following covenants are reasonable and necessary agreements for the protection of the business interests covered in the fully enforceable, ancillary agreements set forth in this Agreement:

( a ) **Definitions.** "Competing Business" means any person or entity that provides services or products that would compete with or displace any services or products sold or being developed for sale by the Company during the term of this Agreement, or engages in any other activities so similar in nature or purpose to those of the Company that they would displace business opportunities or customers of the Company.

( b ) **Recordkeeping and Handling of Covered Items.** Executive agrees to keep and maintain current written records of all customer contacts, inventions, enhancement, and plans he develops regarding matters that are within the scope of the Company's business operations or that relate to research and development on behalf of the Company, and agrees to maintain any records necessary to inform the Company of such business opportunities. All Company Information and other Company documents and materials maintained or entrusted to Executive shall remain the exclusive property of the Company at all times; such materials shall, together with all copies thereof, be returned and delivered to the Company by Executive immediately without demand, upon termination of Executive's relationship with the Company, and shall be returned at a prior time if the Company so demands.

( c ) **No Interference with Employee/Independent Contractor Relationships.** Executive agrees that, except as otherwise provided herein, through the later of the expiration (but not earlier termination) of the three-year term (or any one-year renewal term) of this Agreement or (ii) one year after Executive's employment with the Company ceases, Executive will not, either directly or indirectly, participate in recruiting or hiring away any employees or independent contractors of the Company, or encourage or induce any employees, agents, independent contractors or investors of the Company to terminate their relationship with the Company, unless given the prior written consent of the Board to do so.

( d ) **No Interference with Client/Customer Relationships.** Executive agrees that, except as otherwise provided herein, through the later of (i) the expiration (but not earlier termination) of the three-year term (or any one-year renewal term) of this Agreement or (ii)

one year after Executive's employment with the Company ceases, Executive will not induce or attempt to induce any client or customer of the Company to diminish, curtail, divert, or cancel its business relationship with the Company. The restrictions set forth in this paragraph shall apply worldwide, which the parties stipulate is a reasonable geographic area because of the scope of the Company's operations and Executive's activities.

( e ) **No Unfair Competition.** Executive agrees that, except as otherwise provided herein, through the later of (i) the expiration (but not earlier termination) of the three-year term (or any one-year renewal term) of this Agreement or (ii) one year after Executive's employment with the Company ceases, Executive will not participate in, work for, or assist a Competing Business in any capacity (as owner, employee, consultant, contractor, officer, director, lender, investor, agent, or otherwise), unless given the prior written consent of the Board to do so. The restrictions set forth in this paragraph shall apply worldwide, which the parties stipulate is a reasonable geographic area because of the scope of the Company's operations and Executive's activities. This paragraph creates a narrowly tailored advance approval requirement in order to avoid unfair competition and irreparable harm to the Company and is not intended or to be construed as a general restraint from engaging in a lawful profession or a general covenant against competition, and is ancillary to the Company's agreement contained herein to employ Executive for a definite term. Nothing herein will prohibit ownership of less than 5% of the publicly traded capital stock of a corporation so long as this is not a controlling interest, or ownership of mutual fund investments. Executive acknowledges and agrees that this subsection (e) is reasonable and necessary to protect the trade secrets, confidential information and goodwill of the Company.

(f) **Remedies.** In the event of breach or threatened breach by Executive of any provision of Section 10 hereof, the Company shall be entitled to (i) injunctive relief by temporary restraining order, temporary injunction, and/or permanent injunction; (ii) recovery of all attorneys' fees and costs incurred by the Company in obtaining such relief; and (iii) any other legal and equitable relief to which may be entitled, including, without limitation, any and all monetary damages that the Company may incur as a result of said breach or threatened breach, in each case without the necessity of posting any bond. The Company may pursue any remedy available, including declaratory relief, concurrently or consecutively in any order as to any breach, violation, or threatened breach or violation, and the pursuit of one such remedy at any time will not be deemed an election of remedies or waiver of the right to pursue any other remedy.

( g ) **Early Resolution Conference.** This Agreement is understood to be clear and enforceable as written and is executed by both parties on that basis. However, should Executive later challenge any provision as unclear, unenforceable or inapplicable to any competitive activity that Executive intends to engage in, Executive will first notify the Company in writing and meet with a Company representative and a neutral mediator (if the Company elects to retain one at its expense) to discuss resolution of any disputes between the parties. Executive will provide this notification at least fourteen (14) days before Executive engages in any activity on behalf of a Competing Business or engages in other activity that could foreseeably fall within a questioned restriction. The failure to comply with this requirement shall waive Executive's right to challenge the reasonable scope, clarity, applicability, or enforceability of the Agreement and its restrictions at a later time. All rights of

both parties will be preserved if the Early Resolution Conference requirement is complied with even if no agreement is reached in the conference.

**11. Merger or Acquisition Disposition and Assignment.** In the event the Company should consolidate, or merge into another entity, or transfer all or substantially all of its assets or operations to another Person, or divide its assets or operations among a number of entities, this Agreement shall continue in full force and effect with regard to the surviving entity and may be assigned by the Company if necessary to achieve this purpose. Executive's obligations under this Agreement are personal in nature and may not be assigned by Executive to another Person.

**12. Notices.** All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed to have been delivered on the date personally delivered or on the date deposited in a receptacle maintained by the United States Postal Service for such purpose, postage prepaid, by certified mail, return receipt requested, or by express mail or overnight courier, addressed to the address indicated under the signature block for that party provided below. Either party may designate a different address by providing written notice of a new address to the other party.

**13. Severability.** If any provision contained in this Agreement is determined to be void, illegal or unenforceable by a court of competent jurisdiction, in whole or in part, then the other provisions contained herein shall remain in full force and effect as if the provision that was determined to be void, illegal, or unenforceable had not been contained herein. In making any such determination, the determining court shall deem any such provision to be modified so as to give it the maximum effect permitted by applicable law.

**14. Waiver, Construction and Modification.** The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party. This Agreement may not be modified, altered or amended except by written agreement of all the parties hereto.

**15. Governing Law and Venue.** It is the intention of the parties that the laws of the State of Texas should govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereto without regard to any contrary conflicts of laws principles. It is stipulated that Texas has a compelling state interest in the subject matter of this Agreement, and that Executive has or will have regular contact with Texas in the performance of this Agreement. The agreed upon venue and personal jurisdiction for the parties on any claims or disputes under this Agreement is Dallas County, Texas.

**16. Representation of Executive.** Executive hereby represents and warrants to the Company that Executive has not previously assumed any obligations that would prevent him from accepting, retaining and/or engaging in full employment with the Company, or which Executive could violate in the ordinary course of his duties for the Company. Further, Executive hereby represents and warrants to the Company that Executive has not previously assumed any obligations that are inconsistent with those contained in this Agreement, and that he will not use, disclose, or otherwise rely upon any confidential information or trade secrets derived from any previous employment, if Executive has any, in the performance of his duties on behalf of the Company. Further, Executive acknowledges that he has read and is fully familiar with the terms

of this Agreement, has had a reasonable opportunity to consider this Agreement and to seek legal counsel, and after such review, Executive stipulates that the promises made by him in this Agreement are not greater than necessary for the protection of the Company's good will and other legitimate business interests and do not create undue hardship for Executive or the public.

**17. Withholding Taxes.** The Company may withhold from any and all amounts payable under this Agreement such federal, state, local and any other applicable taxes as the Company determines in its sole discretion are required to be withheld pursuant to any applicable law or regulation.

**18. Compliance with Code Section 409A.** All provisions of this Agreement shall be interpreted in a manner consistent with Code Section 409A and the regulations and other guidance promulgated thereunder. Notwithstanding the preceding, the Company makes no representations concerning the tax consequences of Executive's participation in this Agreement under Code Section 409A or any other federal, state or local tax law. Executive's tax consequences will depend, in part, upon the application of relevant tax law, including Code Section 409A, to the relevant facts and circumstances.

**19. Complete Agreement.** Except for the existing Stock Option Agreements between the Company and Executive, which shall continue in full force and effect, this Agreement contains the complete agreement and understanding concerning the employment arrangement between the parties and will supersede all other agreements, understandings or commitments between the parties as to such subject matter. The parties agree that neither of them has made any representations concerning the subject matter of this Agreement except such representations as are specifically set forth herein. The parties agree that, except as specifically contemplated by this Agreement, this Agreement supersedes any other agreement, plan or arrangement that may now exist that may otherwise apply to or include Executive regarding employment, compensation, bonus, severance or retention benefits, that any such agreements, plans or arrangements are hereby terminated with respect to Executive and that none of the Company nor any affiliate of the Company will have any liability or obligation to Executive, his heirs, successors or beneficiaries with respect to the existence or termination of any such agreements, plans or arrangements, notwithstanding the terms of any of them.

**20. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Company, its successors, legal representatives and assigns, and upon Executive, his heirs, executors, administrators, representatives and assigns. It is specifically agreed that upon the occurrence of any of the events specified in Section 11 above, the provisions of this Employment Agreement shall be binding upon and inure to the benefit of and be assumed by any surviving or resulting Person or any such Person to which such assets shall be transferred.

**21. Captions.** The Section and other headings used in this Agreement are for the convenience of the parties only, are not substantive and shall not affect the meaning or interpretation of any provision of this Agreement.

**22. Counterparts.** This Agreement may be signed in counterparts, which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties agree to each of the foregoing terms.

EXECUTIVE:

/s/ R. Richard Fontaine  
R. Richard Fontaine

Address: c/o GameStop Corp.  
625 Westport Parkway  
Grapevine, TX 76051

THE COMPANY:

GAMESTOP CORP.

By: /s/ David W. Carlson  
Name: David W. Carlson  
Title: Executive Vice President and Chief  
Financial Officer

Address: c/o GameStop Corp.  
625 Westport Parkway  
Grapevine, TX 76051

**AMENDED AND RESTATED**  
**EXECUTIVE EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (this "Agreement") was originally entered into between Daniel A. DeMatteo ("Executive") and GameStop Corp. (the "Company"), collectively referred to as the "Parties," with an "Original Effective Date" of April 11, 2005 and is amended and restated as of the 31<sup>st</sup> day of December, 2008.

The Company has administered this Agreement in good faith compliance with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended ("Code"), and the regulations and other guidance promulgated thereunder, and the Parties wish to amend this employment agreement to comply with the requirements of Code Section 409A. Therefore, this Agreement is amended and restated to read as follows:

**1. Executive's Position/Duties.** During the term of this Agreement, Executive will be employed as the Chief Executive Officer of the Company, and shall have all of the duties and responsibilities of that position. Executive shall be considered a key employee of the Company and shall be entitled to all the Company benefits afforded to key employees. Executive agrees to dedicate all of his working time (during normal working hours other than during excused absences such as for illness or vacation), skill and attention to the business of the Company, agrees to remain loyal to the Company, and not to engage in any conduct that creates a conflict of interest to, or damages the reputation of, the Company. Executive shall abide by the Company's Code of Ethics and Code of Ethics for Senior Financial Officers.

**2. Term of Employment.** Executive's employment under this Agreement will commence on the Original Effective Date, and will continue for a period of three years, unless terminated earlier in accordance with the provisions of this Agreement. At the expiration (but not earlier termination) of the term (including any renewal term), the term of this Agreement shall automatically renew for an additional period of one year, unless either party has given the other party written notice of non-renewal at least six months prior to such expiration.

**3. Compensation.**

(a) **Base Salary.** During the term of this Agreement, the Company shall provide Executive with a base salary of no less than five hundred thirty-five thousand dollars (\$535,000.00) per year, paid in accordance with the Company's normal payroll policies ("Base Salary").

( b ) **Bonuses/Distributions.** Each year during the term of this Agreement, the Company shall provide Executive with a bonus based on the formula and targets established under and in accordance with the Company's Supplemental Compensation Plan. Executive may receive additional bonuses at the discretion of the Board of Directors of the Company (the "Board").

( c ) **Benefits.** Executive shall be entitled to all benefits, including, but not limited to, stock and stock option benefits, insurance programs, pension plans, vacation, sick leave, expense

accounts, and retirement benefits, as afforded other management personnel or as determined by the Board.

( d ) **Expenses.** The Company shall reimburse Executive for reasonable expenses incurred in the performance of his duties and services hereunder and in furtherance of the business of the Company, in accordance with the policies and procedures established by the Company.

( e ) **Reimbursement of Expenses.** Notwithstanding any provision in this Section 3 to the contrary, no expenses incurred after the term of this Agreement shall be subject to reimbursement, except to the extent provided under this Section 3(e). The amount of expenses eligible for reimbursement during a year shall not affect the expenses eligible for reimbursement in any other year. Reimbursement of an eligible expense shall be made in accordance with the Company's policies and practices and as otherwise provided herein, provided that in no event shall reimbursement be made after the last day of the year following the year in which the expense was incurred. The right to reimbursement is not subject to liquidation or exchange for another benefit.

4. **Termination of Employment.** Executive's employment with the Company may be terminated as follows:

( a ) **Death.** In the event of Executive's death, Executive's employment will be terminated immediately.

( b ) **Disability.** In the event of Executive's Disability, as defined below, Executive's employment will be terminated immediately. "Disability" shall mean a written determination by a physician mutually agreeable to the Company and Executive (or, in the event of Executive's total physical or mental disability, Executive's legal representative) that Executive is physically or mentally unable to perform his duties of Chief Executive Officer under this Agreement and that such disability can reasonably be expected to continue for a period of six consecutive months or for shorter periods aggregating 180 days in any 12-month period.

( c ) **Termination by the Company for Cause.** The Company shall be entitled to terminate Executive's employment at any time if it has "Cause," which shall mean any of the following: (i) conviction of, or plea of nolo contendere to, a felony or any crime involving fraud or dishonesty; (ii) willful misconduct that results in a material and demonstrable damage to the business or reputation of the Company; (iii) breach by Executive of any of the covenants contained in Sections 8, 10(c), 10(d) or 10(e) below; or (iv) willful refusal by Executive to perform his obligations under this Agreement or the lawful direction of the Board that is not the result of Executive's death, Disability, physical incapacity or Executive's termination of the Agreement, and that is not corrected within thirty (30) days following written notice thereof to Executive by the Company, such notice to state with specificity the nature of the willful refusal.

( d ) **Without Cause.** Either the Company or Executive may terminate Executive's employment at any time without cause upon written notice.

( e ) **Termination by Executive with Good Reason.** Executive shall be entitled to terminate his employment within 12 months after any of the following events (each of which shall constitute “Good Reason”):

- (i) a material diminution in Executive’s compensation;
  
- (ii) a material diminution in Executive’s authority, duties, or responsibilities; or

(iii) the Company requires Executive to move to another location of the Company or any affiliate of the Company and the distance between Executive’s former residence and new job site is at least 50 miles greater than the distance between Executive’s former residence and former job site.

Notwithstanding the foregoing, Executive shall notify Company in writing if he believes Good Reason exists. Such notice shall set forth in reasonable detail why Executive believes Good Reason exists and shall be provided to the Company within a period not to exceed 90 days of the initial existence of the condition alleged to give rise to Good Reason, upon the notice of which the Company shall have a period of 30 days during which it may remedy the condition.

(f) **Termination by Executive Following a Change in Control.** Following a Change in Control of the Company, Executive shall be entitled to terminate his employment within 30 days following the later of the end of the calendar year within which such Change in Control occurs or the end of the taxable year of the Company within which such Change in Control occurs (such date, the “CIC Termination Date”). For purposes of this Agreement, a “Change in Control” of the Company shall be deemed to have occurred upon the occurrence of one of the following events, provided such event constitutes a change in control under Section 409A of the Code and the regulations and other guidance issued thereunder:

(i) Any one person or more than one person acting as a group (as defined in accordance with Section 409A of the Code and the regulations and other guidance issued thereunder), acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes greater than fifty percent (50%) of the total fair market value or total voting power of the stock of the Company;

(ii) Any one person or more than one person acting as a group (as defined in accordance with Section 409A of the Code and the regulations and other guidance issued thereunder), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the Company possessing 30% or more of the total voting power of the stock of such Company; or a majority of the individuals constituting the Board is replaced during any 12-month period by members whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election; or

(iii) Any one person or more than one person acting as a group (as defined in accordance with Section 409A of the Code and the regulations and other guidance issued

thereunder), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 40% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions. For this purpose, gross fair market value means the value of the assets of the Company or the value of the assets being disposed of determined without regard to any liabilities associated with such assets.

## **5. Compensation and Benefits Upon Termination.**

(a) If Executive's employment is terminated by reason of death or Disability, the Company shall pay Executive's Base Salary, at the rate then in effect, in accordance with the payroll policies of the Company, through the date of Executive's death or Disability (in the event of Executive's death, the payments will be made to Executive's beneficiaries or legal representatives) and Executive shall not be entitled to any further Base Salary or any applicable bonus, benefits or other compensation for that year or any future year, except as may be provided in an applicable benefit plan or program, or to any severance compensation of any kind, nature or amount.

(b) If Executive's employment is terminated by Executive (i) without Good Reason or (ii) other than by the CIC Termination Date following a Change in Control; or by the Company for Cause, the Company will pay to Executive all Base Salary, at the rate then in effect, through the date of Executive's termination of active employment and Executive shall not be entitled to any further Base Salary or any applicable bonus, benefits or other compensation for that year or any future year, except as may be provided in an applicable benefit plan or program, or to any severance compensation of any kind, nature or amount.

(c) If, during the term of this Agreement, (i) Executive terminates his employment for Good Reason, provided that such termination is within 12 months following the initial existence of one or more conditions giving rise to Good Reason; (ii) Executive terminates his employment by the CIC Termination Date following a Change in Control; or (iii) the Company terminates Executive's employment without Cause, the Company will pay to Executive all amounts otherwise payable under this Agreement, at the rate then in effect, through the date of Executive's termination, and the following paragraphs (i) through (vi) shall apply:

( i ) *Base Salary and Payment Schedule.* The Company shall pay Executive an amount equal to the greater of: (A) Executive's Base Salary, at the rate then in effect, otherwise payable through the term of this Agreement; or (B) Executive's Base Salary, at the rate then in effect, for one year. Such payment shall be made to Executive in a lump sum within 30 days following the date of Executive's termination of employment.

( i i ) *Bonus.* The Company shall pay Executive an amount equal to the average of the Executive's last three (3) gross annual bonuses multiplied by the greater of (A) one or (B) the number of years (including any fraction thereof) otherwise remaining through the term of this Agreement. Such payment shall be made to Executive in a lump sum within 30 days following the date of Executive's termination of employment.

(iii) *Medical Benefits.* Upon Executive's termination, Executive will be eligible to elect individual and dependent continuation group health and (if applicable) dental coverage, as provided under Section 4980B(f) of the Code ("COBRA"), for the maximum COBRA coverage period available, subject to all conditions and limitations (including payment of premiums and cancellation of coverage upon obtaining duplicate coverage or Medicare entitlement). If Executive or one or more of Executive's covered dependents is eligible for and elects COBRA coverage, then the Company shall pay the full cost of the COBRA coverage for the eighteen (18) month period following Executive's termination date. Executive (or dependents, as applicable) shall be responsible for paying the full cost of the COBRA coverage (including the two percentage administrative charge) after the earlier of (A) the expiration of eighteen months following Executive's termination date, or (B) eligibility for coverage under another employer's medical plan.

(iv) *Vacation.* Executive shall be entitled to a payment attributable to Base Salary, at the rate then in effect, for unused vacation accrued. Such payment shall be made to Executive in a lump sum within 30 days following the date of Executive's termination of employment.

(v) *Cancellation of Restrictions.* The obligations of Executive under Sections 10(c), 10(d) and 10(e) below shall be immediately terminated and cancelled and be of no further force or effect.

(vi) *Section 280G Limitation.* Notwithstanding anything to the contrary contained herein, in the case of a termination of employment subject to the excise tax under Code Section 280G, or any successor provision thereto, the maximum amount payable pursuant to this Section 5(c) shall be the maximum amount payable to Executive without triggering an excise tax under Code Section 280G, or any successor provision thereto. Any amount eliminated or reduced by application of this subsection to avoid the payment of an excise tax under Code Section 280G shall be made to payments that do not constitute "deferred compensation" within the meaning of Code Section 409A.

## **6. Stock and Options.**

**Release of Stock Restrictions.** The Company hereby agrees and acknowledges that in the event of Executive's death or Disability, or upon the Company's termination of Executive's employment without Cause or Executive's termination of his employment for Good Reason or by the CIC Termination Date following a Change in Control, all restrictions imposed by the Company with respect to all shares of stock and all stock options issued to Executive during his employment with the Company shall lapse and be of no further force or effect; provided, however, that such restrictions shall only lapse and be of no further force or effect to the extent such lapse shall not effect the character of such stock or stock options which are intended to qualify for the performance-based compensation exception to the limitations imposed under Code Section 162(m) as performance-based compensation on grant within the meaning of Code Section 162(m) and the regulations promulgated thereunder. The Company hereby further agrees and acknowledges that all shares of stock issued to Executive have been or will be registered under the Securities Act of 1933, as amended (the "Securities Act"). The Company further agrees to use all best efforts to deliver to Executive as soon as is practicable, certificates

registered in Executive's name evidencing all previously unvested shares, which stock certificates shall contain no restrictive legend except as may be required under the Securities Act.

7. **Specified Employee Determination.** Notwithstanding any provision herein to the contrary, in the event that Executive is determined to be a specified employee within the meaning of Code Section 409A under the default provisions established thereunder, for purposes of any payment on termination of employment under this Agreement, payment(s) shall be made or begin, as applicable, on the first payroll date which is more than six months following the date of separation from service (or, if earlier, upon Executive's death), to the extent required to avoid any adverse tax consequences under Code Section 409A.

8. **Confidentiality/Settlement of Existing Rights.**

(a) In order to induce Executive to enter into this Agreement, and in order to enable Executive to provide services on behalf of the Company, during the term of this Agreement, the Company will provide Executive with access to certain trade secrets and confidential or proprietary information belonging to the Company, which may include, but is not limited to, the identities, customs, and preferences of the Company's existing and prospective clients, customers, tenants or vendors; the identities and skills of the Company's employees; the Company's methods, procedures, analytical techniques, and models used in providing products and services, and in pricing or estimating the cost of such products and services; the Company's financial data, business and marketing plans, projections and strategies; customer lists and data; tenant lists and data, vendor lists and data; training manuals, policy manuals, and quality control manuals; software programs and information systems; and other information relating to the development, marketing, and provision of the Company's products, services, and systems (i.e., "Confidential Information"). Executive acknowledges that this Confidential Information constitutes valuable, special and unique property of the Company.

(b) Executive agrees that, except as may be necessary in the ordinary course of performing his duties under this Agreement, Executive shall not, without prior express written consent of the Company (i) use such Confidential Information for Executive's own benefit or for the benefit of another; or (ii) disclose, directly or indirectly, such Confidential Information to any person, firm, corporation, partnership, association, or other entity (except for authorized personnel of the Company) at any time prior or subsequent to the termination or expiration of this Agreement.

(c) By this Agreement, the Company is providing Executive with rights that Executive did not previously have. In exchange for the foregoing and the additional terms agreed to in this Agreement, Executive agrees that all Company Proprietary and Confidential Information learned or developed by Executive during past employment with the Company and all goodwill developed with the Company's clients, customers and other business contacts by Executive during past employment with the Company is now the exclusive property of the Company, and will be used only for the benefit of the Company, whether previously so agreed or not. Executive expressly waives and releases any claim or allegation that he should be able to use client and customer goodwill, specialized Company training, or Confidential Information, that was previously received or developed by Executive while working for the Company for the benefit of any competing person or entity.

9. **Return of Company Property.** Executive acknowledges that all memoranda, notes, correspondence, databases, discs, records, reports, manuals, books, papers, letters, CD Roms, keys, passwords and access codes, client/customer/vendor/supplier profile data, contracts, orders, and lists, software programs, information and records, and other documentation (whether in draft or final form) relating to the Company's business, and any and all other documents containing Confidential Information furnished to Executive by any representative of the Company or otherwise acquired or developed by him in connection with his association with the Company (collectively, "Recipient Materials") shall at all times be the property of the Company. Within twenty-four (24) hours of the termination of his relationship with the Company, Executive promises to return to the Company any Recipient Materials that are in his possession, custody or control, regardless of whether such Materials are located in Executive's office, automobile, or home or on Executive's business or personal computers. Executive also shall authorize and permit the Company to inspect all computer drives used or maintained by Executive during his employment or consulting at the Company and, if necessary, to permit the Company to delete any Recipient Materials or Proprietary Information contained on such drives.

10. **Protective Covenants.** Executive agrees that the following covenants are reasonable and necessary agreements for the protection of the business interests covered in the fully enforceable, ancillary agreements set forth in this Agreement:

( a ) **Definitions.** "Competing Business" means any person or entity that provides services or products that would compete with or displace any services or products sold or being developed for sale by the Company during the term of this Agreement, or engages in any other activities so similar in nature or purpose to those of the Company that they would displace business opportunities or customers of the Company.

( b ) **Recordkeeping and Handling of Covered Items.** Executive agrees to keep and maintain current written records of all customer contacts, inventions, enhancement, and plans he develops regarding matters that are within the scope of the Company's business operations or that relate to research and development on behalf of the Company, and agrees to maintain any records necessary to inform the Company of such business opportunities. All Company Information and other Company documents and materials maintained or entrusted to Executive shall remain the exclusive property of the Company at all times; such materials shall, together with all copies thereof, be returned and delivered to the Company by Executive immediately without demand, upon termination of Executive's relationship with the Company, and shall be returned at a prior time if the Company so demands.

( c ) **No Interference with Employee/Independent Contractor Relationships.** Executive agrees that, except as otherwise provided herein, through the later of the expiration (but not earlier termination) of the three-year term (or any one-year renewal term) of this Agreement or (ii) one year after Executive's employment with the Company ceases, Executive will not, either directly or indirectly, participate in recruiting or hiring away any employees or independent contractors of the Company, or encourage or induce any employees, agents, independent contractors or investors of the Company to terminate their relationship with the Company, unless given the prior written consent of the Board to do so.

( d ) **No Interference with Client/Customer Relationships.** Executive agrees that, except as otherwise provided herein, through the later of (i) the expiration (but not earlier termination) of the three-year term (or any one-year renewal term) of this Agreement or (ii) one year after Executive's employment with the Company ceases, Executive will not induce or attempt to induce any client or customer of the Company to diminish, curtail, divert, or cancel its business relationship with the Company. The restrictions set forth in this paragraph shall apply worldwide, which the parties stipulate is a reasonable geographic area because of the scope of the Company's operations and Executive's activities.

( e ) **No Unfair Competition.** Executive agrees that, except as otherwise provided herein, through the later of (i) the expiration (but not earlier termination) of the three-year term (or any one-year renewal term) of this Agreement or (ii) one year after Executive's employment with the Company ceases, Executive will not participate in, work for, or assist a Competing Business in any capacity (as owner, employee, consultant, contractor, officer, director, lender, investor, agent, or otherwise), unless given the prior written consent of the Board to do so. The restrictions set forth in this paragraph shall apply worldwide, which the parties stipulate is a reasonable geographic area because of the scope of the Company's operations and Executive's activities. This paragraph creates a narrowly tailored advance approval requirement in order to avoid unfair competition and irreparable harm to the Company and is not intended or to be construed as a general restraint from engaging in a lawful profession or a general covenant against competition, and is ancillary to the Company's agreement contained herein to employ Executive for a definite term. Nothing herein will prohibit ownership of less than 5% of the publicly traded capital stock of a corporation so long as this is not a controlling interest, or ownership of mutual fund investments. Executive acknowledges and agrees that this subsection (e) is reasonable and necessary to protect the trade secrets, confidential information and goodwill of the Company.

( f ) **Remedies.** In the event of breach or threatened breach by Executive of any provision of Section 10 hereof, the Company shall be entitled to (i) injunctive relief by temporary restraining order, temporary injunction, and/or permanent injunction; (ii) recovery of all attorneys' fees and costs incurred by the Company in obtaining such relief; and (iii) any other legal and equitable relief to which may be entitled, including, without limitation, any and all monetary damages that the Company may incur as a result of said breach or threatened breach, in each case without the necessity of posting any bond. The Company may pursue any remedy available, including declaratory relief, concurrently or consecutively in any order as to any breach, violation, or threatened breach or violation, and the pursuit of one such remedy at any time will not be deemed an election of remedies or waiver of the right to pursue any other remedy.

( g ) **Early Resolution Conference.** This Agreement is understood to be clear and enforceable as written and is executed by both parties on that basis. However, should Executive later challenge any provision as unclear, unenforceable or inapplicable to any competitive activity that Executive intends to engage in, Executive will first notify the Company in writing and meet with a Company representative and a neutral mediator (if the Company elects to retain one at its expense) to discuss resolution of any disputes between the parties. Executive will provide this notification at least fourteen (14) days before Executive engages in any activity on behalf of a Competing Business or engages in other activity that could foreseeably fall within a

questioned restriction. The failure to comply with this requirement shall waive Executive's right to challenge the reasonable scope, clarity, applicability, or enforceability of the Agreement and its restrictions at a later time. All rights of both parties will be preserved if the Early Resolution Conference requirement is complied with even if no agreement is reached in the conference.

**11. Merger or Acquisition Disposition and Assignment.** In the event the Company should consolidate, or merge into another entity, or transfer all or substantially all of its assets or operations to another Person, or divide its assets or operations among a number of entities, this Agreement shall continue in full force and effect with regard to the surviving entity and may be assigned by the Company if necessary to achieve this purpose. Executive's obligations under this Agreement are personal in nature and may not be assigned by Executive to another Person.

**12. Notices.** All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed to have been delivered on the date personally delivered or on the date deposited in a receptacle maintained by the United States Postal Service for such purpose, postage prepaid, by certified mail, return receipt requested, or by express mail or overnight courier, addressed to the address indicated under the signature block for that party provided below. Either party may designate a different address by providing written notice of a new address to the other party.

**13. Severability.** If any provision contained in this Agreement is determined to be void, illegal or unenforceable by a court of competent jurisdiction, in whole or in part, then the other provisions contained herein shall remain in full force and effect as if the provision that was determined to be void, illegal, or unenforceable had not been contained herein. In making any such determination, the determining court shall deem any such provision to be modified so as to give it the maximum effect permitted by applicable law.

**14. Waiver, Construction and Modification.** The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party. This Agreement may not be modified, altered or amended except by written agreement of all the parties hereto.

**15. Governing Law and Venue.** It is the intention of the parties that the laws of the State of Texas should govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereto without regard to any contrary conflicts of laws principles. It is stipulated that Texas has a compelling state interest in the subject matter of this Agreement, and that Executive has or will have regular contact with Texas in the performance of this Agreement. The agreed upon venue and personal jurisdiction for the parties on any claims or disputes under this Agreement is Dallas County, Texas.

**16. Representation of Executive.** Executive hereby represents and warrants to the Company that Executive has not previously assumed any obligations that would prevent him from accepting, retaining and/or engaging in full employment with the Company, or which Executive could violate in the ordinary course of his duties for the Company. Further, Executive hereby represents and warrants to the Company that Executive has not previously assumed any obligations that are inconsistent with those contained in this Agreement, and that he will not use, disclose, or otherwise rely upon any confidential information or trade secrets derived from any

previous employment, if Executive has any, in the performance of his duties on behalf of the Company. Further, Executive acknowledges that he has read and is fully familiar with the terms of this Agreement, has had a reasonable opportunity to consider this Agreement and to seek legal counsel, and after such review, Executive stipulates that the promises made by him in this Agreement are not greater than necessary for the protection of the Company's good will and other legitimate business interests and do not create undue hardship for Executive or the public.

**17. Withholding Taxes.** The Company may withhold from any and all amounts payable under this Agreement such federal, state, local and any other applicable taxes as the Company determines in its sole discretion are required to be withheld pursuant to any applicable law or regulation.

**18. Compliance with Code Section 409A.** All provisions of this Agreement shall be interpreted in a manner consistent with Code Section 409A and the regulations and other guidance promulgated thereunder. Notwithstanding the preceding, the Company makes no representations concerning the tax consequences of Executive's participation in this Agreement under Code Section 409A or any other federal, state or local tax law. Executive's tax consequences will depend, in part, upon the application of relevant tax law, including Code Section 409A, to the relevant facts and circumstances.

**19. Complete Agreement.** Except for the existing Stock Option Agreements between the Company and Executive, which shall continue in full force and effect, this Agreement contains the complete agreement and understanding concerning the employment arrangement between the parties and will supersede all other agreements, understandings or commitments between the parties as to such subject matter. The parties agree that neither of them has made any representations concerning the subject matter of this Agreement except such representations as are specifically set forth herein. The parties agree that, except as specifically contemplated by this Agreement, this Agreement supersedes any other agreement, plan or arrangement that may now exist that may otherwise apply to or include Executive regarding employment, compensation, bonus, severance or retention benefits, that any such agreements, plans or arrangements are hereby terminated with respect to Executive and that none of the Company nor any affiliate of the Company will have any liability or obligation to Executive, his heirs, successors or beneficiaries with respect to the existence or termination of any such agreements, plans or arrangements, notwithstanding the terms of any of them.

**20. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Company, its successors, legal representatives and assigns, and upon Executive, his heirs, executors, administrators, representatives and assigns. It is specifically agreed that upon the occurrence of any of the events specified in Section 11 above, the provisions of this Employment Agreement shall be binding upon and inure to the benefit of and be assumed by any surviving or resulting Person or any such Person to which such assets shall be transferred.

**21. Captions.** The Section and other headings used in this Agreement are for the convenience of the parties only, are not substantive and shall not affect the meaning or interpretation of any provision of this Agreement.

22. **Counterparts.** This Agreement may be signed in counterparts, which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties agree to each of the foregoing terms.

EXECUTIVE:

/s/ Daniel A. DeMatteo  
Daniel A. DeMatteo

Address: c/o GameStop Corp.  
625 Westport Parkway  
Grapevine, TX 76051

THE COMPANY:

GAMESTOP CORP.

By: /s/ David W. Carlson  
Name: David W. Carlson  
Title: Executive Vice President and Chief  
Financial Officer

Address: c/o GameStop Corp.  
625 Westport Parkway  
Grapevine, TX 76051

**AMENDED AND RESTATED**  
**EXECUTIVE EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (this "Agreement") was originally entered into between David W. Carlson ("Executive") and GameStop Corp. (the "Company"), collectively referred to as the "Parties," with an "Original Effective Date" of April 3, 2006 and is amended and restated as of the 31<sup>st</sup> day of December, 2008.

The Company has administered this Agreement in good faith compliance with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended ("Code"), and the regulations and other guidance promulgated thereunder, and the Parties wish to amend this employment agreement to comply with the requirements of Code Section 409A. Therefore, this Agreement is amended and restated to read as follows:

1. **Executive's Position/Duties.** During the term of this Agreement, Executive will be employed as the Executive Vice President and Chief Financial Officer of the Company, and shall have all of the duties and responsibilities of that position. Executive shall be considered a key employee of the Company and shall be entitled to all the Company benefits afforded to key employees. Executive agrees to dedicate all of his working time (during normal working hours other than during excused absences such as for illness or vacation), skill and attention to the business of the Company, agrees to remain loyal to the Company, and not to engage in any conduct that creates a conflict of interest to, or damages the reputation of, the Company. Executive shall abide by the Company's Code of Ethics and Code of Ethics for Senior Financial Officers.

2. **Term of Employment.** Executive's employment under this Agreement will commence on the Original Effective Date, and will continue for a period of two years, unless terminated earlier in accordance with the provisions of this Agreement. At the expiration (but not earlier termination) of the term (including any renewal term), the term of this Agreement shall automatically renew for an additional period of one year, unless either party has given the other party written notice of non-renewal at least six months prior to such expiration.

3. **Compensation.**

(a) **Base Salary.** During the term of this Agreement, the Company shall provide Executive with a base salary of no less than three hundred fifty thousand dollars (\$350,000.00) per year, paid in accordance with the Company's normal payroll policies ("Base Salary").

( b ) **Bonuses/Distributions.** Each year during the term of this Agreement, the Company shall provide Executive with a bonus based on the formula and targets established under and in accordance with the Company's Supplemental Compensation Plan. Executive may receive additional bonuses at the discretion of the Board of Directors of the Company (the "Board").

( c ) **Benefits.** Executive shall be entitled to all benefits, including, but not limited to, stock and stock option benefits, insurance programs, pension plans, vacation, sick leave, expense

accounts, and retirement benefits, as afforded other management personnel or as determined by the Board.

( d ) **Expenses.** The Company shall reimburse Executive for reasonable expenses incurred in the performance of his duties and services hereunder and in furtherance of the business of the Company, in accordance with the policies and procedures established by the Company.

( e ) **Reimbursement of Expenses.** Notwithstanding any provision in this Section 3 to the contrary, no expenses incurred after the term of this Agreement shall be subject to reimbursement, except to the extent provided under this Section 3(e). The amount of expenses eligible for reimbursement during a year shall not affect the expenses eligible for reimbursement in any other year. Reimbursement of an eligible expense shall be made in accordance with the Company's policies and practices and as otherwise provided herein, provided that in no event shall reimbursement be made after the last day of the year following the year in which the expense was incurred. The right to reimbursement is not subject to liquidation or exchange for another benefit.

**4. Termination of Employment.** Executive's employment with the Company may be terminated as follows:

( a ) **Death.** In the event of Executive's death, Executive's employment will be terminated immediately.

( b ) **Disability.** In the event of Executive's Disability, as defined below, Executive's employment will be terminated immediately. "Disability" shall mean a written determination by a physician mutually agreeable to the Company and Executive (or, in the event of Executive's total physical or mental disability, Executive's legal representative) that Executive is physically or mentally unable to perform his duties of Executive Vice President and Chief Financial Officer under this Agreement and that such disability can reasonably be expected to continue for a period of six consecutive months or for shorter periods aggregating 180 days in any 12-month period.

( c ) **Termination by the Company for Cause.** The Company shall be entitled to terminate Executive's employment at any time if it has "Cause," which shall mean any of the following: (i) conviction of, or plea of nolo contendere to, a felony or any crime involving fraud or dishonesty; (ii) willful misconduct that results in a material and demonstrable damage to the business or reputation of the Company; (iii) breach by Executive of any of the covenants contained in Sections 8, 10(c), 10(d) or 10(e) below; or (iv) willful refusal by Executive to perform his obligations under this Agreement or the lawful direction of the Board that is not the result of Executive's death, Disability, physical incapacity or Executive's termination of the Agreement, and that is not corrected within thirty (30) days following written notice thereof to Executive by the Company, such notice to state with specificity the nature of the willful refusal.

( d ) **Without Cause.** Either the Company or Executive may terminate Executive's employment at any time without cause upon written notice.

( e ) **Termination by Executive with Good Reason.** Executive shall be entitled to terminate his employment within 12 months after any of the following events (each of which shall constitute “Good Reason”):

- (i) a material diminution in Executive’s compensation;
  
- (ii) a material diminution in Executive’s authority, duties, or responsibilities; or

(iii) the Company requires Executive to move to another location of the Company or any affiliate of the Company and the distance between Executive’s former residence and new job site is at least 50 miles greater than the distance between Executive’s former residence and former job site.

Notwithstanding the foregoing, Executive shall notify Company in writing if he believes Good Reason exists. Such notice shall set forth in reasonable detail why Executive believes Good Reason exists and shall be provided to the Company within a period not to exceed 90 days of the initial existence of the condition alleged to give rise to Good Reason, upon the notice of which the Company shall have a period of 30 days during which it may remedy the condition.

(f) **Termination by Executive Following a Change in Control.** Following a Change in Control of the Company, Executive shall be entitled to terminate his employment within 30 days following the later of the end of the calendar year within which such Change in Control occurs or the end of the taxable year of the Company within which such Change in Control occurs (such date, the “CIC Termination Date”). For purposes of this Agreement, a “Change in Control” of the Company shall be deemed to have occurred upon the occurrence of one of the following events provided such event constitutes a change in control under Section 409A of the Code and the regulations and other guidance issued thereunder:

(i) Any one person or more than one person acting as a group (as defined in accordance with Section 409A of the Code and the regulations and other guidance issued thereunder), acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes greater than fifty percent (50%) of the total fair market value or total voting power of the stock of the Company;

(ii) Any one person or more than one person acting as a group (as defined in accordance with Section 409A of the Code and the regulations and other guidance issued thereunder), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the Company possessing 30% or more of the total voting power of the stock of such Company; or a majority of the individuals constituting the Board is replaced during any 12-month period by members whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election; or

(iii) Any one person or more than one person acting as a group (as defined in accordance with Section 409A of the Code and the regulations and other guidance issued

thereunder), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 40% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions. For this purpose, gross fair market value means the value of the assets of the Company or the value of the assets being disposed of determined without regard to any liabilities associated with such assets.

## **5. Compensation and Benefits Upon Termination.**

(a) If Executive's employment is terminated by reason of death or Disability, the Company shall pay Executive's Base Salary, at the rate then in effect, in accordance with the payroll policies of the Company, through the date of Executive's death or Disability (in the event of Executive's death, the payments will be made to Executive's beneficiaries or legal representatives) and Executive shall not be entitled to any further Base Salary or any applicable bonus, benefits or other compensation for that year or any future year, except as may be provided in an applicable benefit plan or program, or to any severance compensation of any kind, nature or amount.

(b) If Executive's employment is terminated by Executive (i) without Good Reason or (ii) other than by the CIC Termination Date following a Change in Control; or by the Company for Cause, the Company will pay to Executive all Base Salary, at the rate then in effect, through the date of Executive's termination of active employment and Executive shall not be entitled to any further Base Salary or any applicable bonus, benefits or other compensation for that year or any future year, except as may be provided in an applicable benefit plan or program, or to any severance compensation of any kind, nature or amount.

(c) If, during the term of this Agreement, (i) Executive terminates his employment for Good Reason, provided that such termination is within 12 months following the initial existence of one or more conditions giving rise to Good Reason; (ii) Executive terminates his employment by the CIC Termination Date following a Change in Control; or (iii) the Company terminates Executive's employment without Cause, the Company will pay to Executive all amounts otherwise payable under this Agreement, at the rate then in effect, through the date of Executive's termination, and the following paragraphs (i) through (vi) shall apply:

( i ) *Base Salary and Payment Schedule.* The Company shall pay Executive an amount equal to the greater of: (A) Executive's Base Salary, at the rate then in effect, otherwise payable through the term of this Agreement; or (B) Executive's Base Salary, at the rate then in effect, for one year. Such payment shall be made to Executive in a lump sum within 30 days following the date of Executive's termination of employment.

( i i ) *Bonus.* The Company shall pay Executive an amount equal to the average of the Executive's last three (3) gross annual bonuses multiplied by the greater of (A) one or (B) the number of years (including any fraction thereof) otherwise remaining through the term of this Agreement. Such payment shall be made to Executive in a lump sum within 30 days following the date of Executive's termination of employment.

(iii) *Medical Benefits.* Upon Executive's termination, Executive will be eligible to elect individual and dependent continuation group health and (if applicable) dental coverage, as provided under Section 4980B(f) of the Code ("COBRA"), for the maximum COBRA coverage period available, subject to all conditions and limitations (including payment of premiums and cancellation of coverage upon obtaining duplicate coverage or Medicare entitlement). If Executive or one or more of Executive's covered dependents is eligible for and elects COBRA coverage, then the Company shall pay the full cost of the COBRA coverage for the eighteen (18) month period following Executive's termination date. Executive (or dependents, as applicable) shall be responsible for paying the full cost of the COBRA coverage (including the two percentage administrative charge) after the earlier of (A) the expiration of eighteen months following Executive's termination date, or (B) eligibility for coverage under another employer's medical plan.

(iv) *Vacation.* Executive shall be entitled to a payment attributable to Base Salary, at the rate then in effect, for unused vacation accrued. Such payment shall be made to Executive in a lump sum within 30 days following the date of Executive's termination of employment.

(v) *Cancellation of Restrictions.* The obligations of Executive under Sections 10(c), 10(d) and 10(e) below shall be immediately terminated and cancelled and be of no further force or effect.

(vi) *Section 280G Limitation.* Notwithstanding anything to the contrary contained herein, in the case of a termination of employment subject to the excise tax under Code Section 280G, or any successor provision thereto, the maximum amount payable pursuant to this Section 5(c) shall be the maximum amount payable to Executive without triggering an excise tax under Code Section 280G, or any successor provision thereto. Any amount eliminated or reduced by application of this subsection to avoid the payment of an excise tax under Code Section 280G shall be made to payments that do not constitute "deferred compensation" within the meaning of Code Section 409A.

## **6. Stock and Options.**

**Release of Stock Restrictions.** The Company hereby agrees and acknowledges that in the event of Executive's death or Disability, or upon the Company's termination of Executive's employment without Cause or Executive's termination of his employment for Good Reason or by the CIC Termination Date following a Change in Control, all restrictions imposed by the Company with respect to all shares of stock and all stock options issued to Executive during his employment with the Company shall lapse and be of no further force or effect; provided, however, that such restrictions shall only lapse and be of no further force or effect to the extent such lapse shall not effect the character of such stock or stock options which are intended to qualify for the performance-based compensation exception to the limitations imposed under Code Section 162(m) as performance-based compensation on grant within the meaning of Code Section 162(m) and the regulations promulgated thereunder. The Company hereby further agrees and acknowledges that all shares of stock issued to Executive have been or will be registered under the Securities Act of 1933, as amended (the "Securities Act"). The Company further

agrees to use all best efforts to deliver to Executive as soon as is practicable, certificates registered in Executive's name evidencing all previously unvested shares, which stock certificates shall contain no restrictive legend except as may be required under the Securities Act.

7. **Specified Employee Determination.** Notwithstanding any provision herein to the contrary, in the event that Executive is determined to be a specified employee within the meaning of Code Section 409A under the default provisions established thereunder, for purposes of any payment on termination of employment under this Agreement, payment(s) shall be made or begin, as applicable, on the first payroll date which is more than six months following the date of separation from service (or, if earlier, upon Executive's death), to the extent required to avoid any adverse tax consequences under Code Section 409A.

8. **Confidentiality/Settlement of Existing Rights.**

(a) In order to induce Executive to enter into this Agreement, and in order to enable Executive to provide services on behalf of the Company, during the term of this Agreement, the Company will provide Executive with access to certain trade secrets and confidential or proprietary information belonging to the Company, which may include, but is not limited to, the identities, customs, and preferences of the Company's existing and prospective clients, customers, tenants or vendors; the identities and skills of the Company's employees; the Company's methods, procedures, analytical techniques, and models used in providing products and services, and in pricing or estimating the cost of such products and services; the Company's financial data, business and marketing plans, projections and strategies; customer lists and data; tenant lists and data, vendor lists and data; training manuals, policy manuals, and quality control manuals; software programs and information systems; and other information relating to the development, marketing, and provision of the Company's products, services, and systems (i.e., "Confidential Information"). Executive acknowledges that this Confidential Information constitutes valuable, special and unique property of the Company.

(b) Executive agrees that, except as may be necessary in the ordinary course of performing his duties under this Agreement, Executive shall not, without prior express written consent of the Company (i) use such Confidential Information for Executive's own benefit or for the benefit of another; or (ii) disclose, directly or indirectly, such Confidential Information to any person, firm, corporation, partnership, association, or other entity (except for authorized personnel of the Company) at any time prior or subsequent to the termination or expiration of this Agreement.

(c) By this Agreement, the Company is providing Executive with rights that Executive did not previously have. In exchange for the foregoing and the additional terms agreed to in this Agreement, Executive agrees that all Company Proprietary and Confidential Information learned or developed by Executive during past employment with the Company and all goodwill developed with the Company's clients, customers and other business contacts by Executive during past employment with the Company is now the exclusive property of the Company, and will be used only for the benefit of the Company, whether previously so agreed or not. Executive expressly waives and releases any claim or allegation that he should be able to use client and customer goodwill, specialized Company training, or Confidential Information, that

was previously received or developed by Executive while working for the Company for the benefit of any competing person or entity.

**9. Return of Company Property.** Executive acknowledges that all memoranda, notes, correspondence, databases, discs, records, reports, manuals, books, papers, letters, CD Roms, keys, passwords and access codes, client/customer/vendor/supplier profile data, contracts, orders, and lists, software programs, information and records, and other documentation (whether in draft or final form) relating to the Company's business, and any and all other documents containing Confidential Information furnished to Executive by any representative of the Company or otherwise acquired or developed by him in connection with his association with the Company (collectively, "*Recipient Materials*") shall at all times be the property of the Company. Within twenty-four (24) hours of the termination of his relationship with the Company, Executive promises to return to the Company any Recipient Materials that are in his possession, custody or control, regardless of whether such Materials are located in Executive's office, automobile, or home or on Executive's business or personal computers. Executive also shall authorize and permit the Company to inspect all computer drives used or maintained by Executive during his employment or consulting at the Company and, if necessary, to permit the Company to delete any Recipient Materials or Proprietary Information contained on such drives.

**10. Protective Covenants.** Executive agrees that the following covenants are reasonable and necessary agreements for the protection of the business interests covered in the fully enforceable, ancillary agreements set forth in this Agreement:

( a ) **Definitions.** "Competing Business" means any person or entity that provides services or products that would compete with or displace any services or products sold or being developed for sale by the Company during the term of this Agreement, or engages in any other activities so similar in nature or purpose to those of the Company that they would displace business opportunities or customers of the Company.

( b ) **Recordkeeping and Handling of Covered Items.** Executive agrees to keep and maintain current written records of all customer contacts, inventions, enhancement, and plans he develops regarding matters that are within the scope of the Company's business operations or that relate to research and development on behalf of the Company, and agrees to maintain any records necessary to inform the Company of such business opportunities. All Company Information and other Company documents and materials maintained or entrusted to Executive shall remain the exclusive property of the Company at all times; such materials shall, together with all copies thereof, be returned and delivered to the Company by Executive immediately without demand, upon termination of Executive's relationship with the Company, and shall be returned at a prior time if the Company so demands.

( c ) **No Interference with Employee/Independent Contractor Relationships.** Executive agrees that, except as otherwise provided herein, through the later of (i) the expiration (but not earlier termination) of the three-year term (or any one-year renewal term) of this Agreement or (ii) one year after Executive's employment with the Company ceases, Executive will not, either directly or indirectly, participate in recruiting or hiring away any employees or independent contractors of the Company, or encourage or induce any employees, agents,

independent contractors or investors of the Company to terminate their relationship with the Company, unless given the prior written consent of the Board to do so.

( d ) **No Interference with Client/Customer Relationships.** Executive agrees that, except as otherwise provided herein, through the later of (i) the expiration (but not earlier termination) of the three-year term (or any one-year renewal term) of this Agreement or (ii) one year after Executive's employment with the Company ceases, Executive will not induce or attempt to induce any client or customer of the Company to diminish, curtail, divert, or cancel its business relationship with the Company. The restrictions set forth in this paragraph shall apply worldwide, which the parties stipulate is a reasonable geographic area because of the scope of the Company's operations and Executive's activities.

( e ) **No Unfair Competition.** Executive agrees that, except as otherwise provided herein, through the later of (i) the expiration (but not earlier termination) of the three-year term (or any one-year renewal term) of this Agreement or (ii) one year after Executive's employment with the Company ceases, Executive will not participate in, work for, or assist a Competing Business in any capacity (as owner, employee, consultant, contractor, officer, director, lender, investor, agent, or otherwise), unless given the prior written consent of the Board to do so. The restrictions set forth in this paragraph shall apply worldwide, which the parties stipulate is a reasonable geographic area because of the scope of the Company's operations and Executive's activities. This paragraph creates a narrowly tailored advance approval requirement in order to avoid unfair competition and irreparable harm to the Company and is not intended or to be construed as a general restraint from engaging in a lawful profession or a general covenant against competition, and is ancillary to the Company's agreement contained herein to employ Executive for a definite term. Nothing herein will prohibit ownership of less than 5% of the publicly traded capital stock of a corporation so long as this is not a controlling interest, or ownership of mutual fund investments. Executive acknowledges and agrees that this subsection (e) is reasonable and necessary to protect the trade secrets, confidential information and goodwill of the Company.

( f ) **Remedies.** In the event of breach or threatened breach by Executive of any provision of Section 10 hereof, the Company shall be entitled to (i) injunctive relief by temporary restraining order, temporary injunction, and/or permanent injunction; (ii) recovery of all attorneys' fees and costs incurred by the Company in obtaining such relief; and (iii) any other legal and equitable relief to which may be entitled, including, without limitation, any and all monetary damages that the Company may incur as a result of said breach or threatened breach, in each case without the necessity of posting any bond. The Company may pursue any remedy available, including declaratory relief, concurrently or consecutively in any order as to any breach, violation, or threatened breach or violation, and the pursuit of one such remedy at any time will not be deemed an election of remedies or waiver of the right to pursue any other remedy.

( g ) **Early Resolution Conference.** This Agreement is understood to be clear and enforceable as written and is executed by both parties on that basis. However, should Executive later challenge any provision as unclear, unenforceable or inapplicable to any competitive activity that Executive intends to engage in, Executive will first notify the Company in writing and meet with a Company representative and a neutral mediator (if the Company elects to retain

one at its expense) to discuss resolution of any disputes between the parties. Executive will provide this notification at least fourteen (14) days before Executive engages in any activity on behalf of a Competing Business or engages in other activity that could foreseeably fall within a questioned restriction. The failure to comply with this requirement shall waive Executive's right to challenge the reasonable scope, clarity, applicability, or enforceability of the Agreement and its restrictions at a later time. All rights of both parties will be preserved if the Early Resolution Conference requirement is complied with even if no agreement is reached in the conference.

**11. Merger or Acquisition Disposition and Assignment.** In the event the Company should consolidate, or merge into another entity, or transfer all or substantially all of its assets or operations to another Person, or divide its assets or operations among a number of entities, this Agreement shall continue in full force and effect with regard to the surviving entity and may be assigned by the Company if necessary to achieve this purpose. Executive's obligations under this Agreement are personal in nature and may not be assigned by Executive to another Person.

**12. Notices.** All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed to have been delivered on the date personally delivered or on the date deposited in a receptacle maintained by the United States Postal Service for such purpose, postage prepaid, by certified mail, return receipt requested, or by express mail or overnight courier, addressed to the address indicated under the signature block for that party provided below. Either party may designate a different address by providing written notice of a new address to the other party.

**13. Severability.** If any provision contained in this Agreement is determined to be void, illegal or unenforceable by a court of competent jurisdiction, in whole or in part, then the other provisions contained herein shall remain in full force and effect as if the provision that was determined to be void, illegal, or unenforceable had not been contained herein. In making any such determination, the determining court shall deem any such provision to be modified so as to give it the maximum effect permitted by applicable law.

**14. Waiver, Construction and Modification.** The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party. This Agreement may not be modified, altered or amended except by written agreement of all the parties hereto.

**15. Governing Law and Venue.** It is the intention of the parties that the laws of the State of Texas should govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereto without regard to any contrary conflicts of laws principles. It is stipulated that Texas has a compelling state interest in the subject matter of this Agreement, and that Executive has or will have regular contact with Texas in the performance of this Agreement. The agreed upon venue and personal jurisdiction for the parties on any claims or disputes under this Agreement is Dallas County, Texas.

**16. Representation of Executive.** Executive hereby represents and warrants to the Company that Executive has not previously assumed any obligations that would prevent him from accepting, retaining and/or engaging in full employment with the Company, or which Executive could violate in the ordinary course of his duties for the Company. Further, Executive

hereby represents and warrants to the Company that Executive has not previously assumed any obligations that are inconsistent with those contained in this Agreement, and that he will not use, disclose, or otherwise rely upon any confidential information or trade secrets derived from any previous employment, if Executive has any, in the performance of his duties on behalf of the Company. Further, Executive acknowledges that he has read and is fully familiar with the terms of this Agreement, has had a reasonable opportunity to consider this Agreement and to seek legal counsel, and after such review, Executive stipulates that the promises made by him in this Agreement are not greater than necessary for the protection of the Company's good will and other legitimate business interests and do not create undue hardship for Executive or the public.

**17. Withholding Taxes.** The Company may withhold from any and all amounts payable under this Agreement such federal, state, local and any other applicable taxes as the Company determines in its sole discretion are required to be withheld pursuant to any applicable law or regulation.

**18. Compliance with Code Section 409A.** All provisions of this Agreement shall be interpreted in a manner consistent with Code Section 409A and the regulations and other guidance promulgated thereunder. Notwithstanding the preceding, the Company makes no representations concerning the tax consequences of Executive's participation in this Agreement under Code Section 409A or any other federal, state or local tax law. Executive's tax consequences will depend, in part, upon the application of relevant tax law, including Code Section 409A, to the relevant facts and circumstances.

**19. Complete Agreement.** Except for the existing Stock Option Agreements between the Company and Executive, which shall continue in full force and effect, this Agreement contains the complete agreement and understanding concerning the employment arrangement between the parties and will supersede all other agreements, understandings or commitments between the parties as to such subject matter. The parties agree that neither of them has made any representations concerning the subject matter of this Agreement except such representations as are specifically set forth herein. The parties agree that, except as specifically contemplated by this Agreement, this Agreement supersedes any other agreement, plan or arrangement that may now exist that may otherwise apply to or include Executive regarding employment, compensation, bonus, severance or retention benefits, that any such agreements, plans or arrangements are hereby terminated with respect to Executive and that none of the Company nor any affiliate of the Company will have any liability or obligation to Executive, his heirs, successors or beneficiaries with respect to the existence or termination of any such agreements, plans or arrangements, notwithstanding the terms of any of them.

**20. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Company, its successors, legal representatives and assigns, and upon Executive, his heirs, executors, administrators, representatives and assigns. It is specifically agreed that upon the occurrence of any of the events specified in Section 11 above, the provisions of this Employment Agreement shall be binding upon and inure to the benefit of and be assumed by any surviving or resulting Person or any such Person to which such assets shall be transferred.

21. **Captions.** The Section and other headings used in this Agreement are for the convenience of the parties only, are not substantive and shall not affect the meaning or interpretation of any provision of this Agreement.

22. **Counterparts.** This Agreement may be signed in counterparts, which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties agree to each of the foregoing terms.

EXECUTIVE:

/s/ David W. Carlson  
David W. Carlson

Address: c/o GameStop Corp.  
625 Westport Parkway  
Grapevine, TX 76051

THE COMPANY:

GAMESTOP CORP.

By: /s/ Daniel A. DeMatteo  
Name: Daniel A. DeMatteo  
Title: Chief Executive Officer

Address: c/o GameStop Corp.  
625 Westport Parkway  
Grapevine, TX 76051

**AMENDED AND RESTATED**  
**EXECUTIVE EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (this "Agreement") was originally entered into between Tony Bartel ("Executive") and GameStop Corp. (the "Company"), collectively referred to as the "Parties," with an "Original Effective Date" of October 24, 2008 and is amended and restated as of the 31<sup>st</sup> day of December, 2008.

The Company has administered this Agreement in good faith compliance with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended ("Code"), and the regulations and other guidance promulgated thereunder, and the Parties wish to amend this employment agreement to comply with the requirements of Code Section 409A. Therefore, this Agreement is amended and restated to read as follows:

**1. Executive's Position/Duties.** During the term of this Agreement, Executive will be employed as the Executive Vice President – Merchandising and Marketing of the Company, and shall have all of the duties and responsibilities of that position. Executive shall be considered a key employee of the Company and shall be entitled to all the Company benefits afforded to key employees. Executive agrees to dedicate all of his working time (during normal working hours other than during excused absences such as for illness or vacation), skill and attention to the business of the Company, agrees to remain loyal to the Company, and not to engage in any conduct that creates a conflict of interest to, or damages the reputation of, the Company. Executive shall abide by the Company's Code of Ethics and Code of Ethics for Senior Financial Officers.

**2. Term of Employment.** Executive's employment under this Agreement will commence on the Original Effective Date, and will continue for a period of three years, unless terminated earlier in accordance with the provisions of this Agreement. At the expiration (but not earlier termination) of the term (including any renewal term), the term of this Agreement shall automatically renew for an additional period of one year, unless either party has given the other party written notice of non-renewal at least six months prior to such expiration.

**3. Compensation.**

a . **Base Salary.** During the term of this Agreement, the Company shall provide Executive with a base salary of no less than four hundred thousand dollars (\$400,000.00) per year, paid in accordance with the Company's normal payroll policies ("Base Salary").

b . **Bonuses/Distributions.** Each year during the term of this Agreement, the Company shall provide Executive with a bonus based on the formula and targets established under and in accordance with the Company's Supplemental Compensation Plan. Executive may receive additional bonuses at the discretion of the Board of Directors of the Company (the "Board").

c . **Benefits.** Executive shall be entitled to all benefits, including, but not limited to, stock and stock option benefits, insurance programs, pension plans, vacation, sick leave, expense

accounts, and retirement benefits, as afforded other management personnel or as determined by the Board.

d . **Expenses.** The Company shall reimburse Executive for reasonable expenses incurred in the performance of his duties and services hereunder and in furtherance of the business of the Company, in accordance with the policies and procedures established by the Company.

e . **Reimbursement of Expenses.** Notwithstanding any provision in this Section 3 to the contrary, no expenses incurred after the term of this Agreement shall be subject to reimbursement, except to the extent provided under this Section 3(e). The amount of expenses eligible for reimbursement during a year shall not affect the expenses eligible for reimbursement in any other year. Reimbursement of an eligible expense shall be made in accordance with the Company's policies and practices and as otherwise provided herein, provided that in no event shall reimbursement be made after the last day of the year following the year in which the expense was incurred. The right to reimbursement is not subject to liquidation or exchange for another benefit.

4. **Termination of Employment.** Executive's employment with the Company may be terminated as follows:

a . **Death.** In the event of Executive's death, Executive's employment will be terminated immediately.

b . **Disability.** In the event of Executive's Disability, as defined below, Executive's employment will be terminated immediately. "Disability" shall mean a written determination by a physician mutually agreeable to the Company and Executive (or, in the event of Executive's total physical or mental disability, Executive's legal representative) that Executive is physically or mentally unable to perform his duties of Executive Vice President – Merchandising and Marketing under this Agreement and that such disability can reasonably be expected to continue for a period of six consecutive months or for shorter periods aggregating 180 days in any 12-month period.

c . **Termination by the Company for Cause.** The Company shall be entitled to terminate Executive's employment at any time if it has "**Cause,**" which shall mean any of the following: (i) conviction of, or plea of nolo contendere to, a felony or any crime involving fraud or dishonesty; (ii) willful misconduct that results in a material and demonstrable damage to the business or reputation of the Company; (iii) breach by Executive of any of the covenants contained in Sections 8, 10(c), 10(d) or 10(e) below; or (iv) willful refusal by Executive to perform his obligations under this Agreement or the lawful direction of the Board that is not the result of Executive's death, Disability, physical incapacity or Executive's termination of the Agreement, and that is not corrected within thirty (30) days following written notice thereof to Executive by the Company, such notice to state with specificity the nature of the willful refusal.

d . **Without Cause.** Either the Company or Executive may terminate Executive's employment at any time without cause upon written notice.

e . **Termination by Executive with Good Reason.** Executive shall be entitled to terminate his employment within 12 months after any of the following events (each of which shall constitute “Good Reason”):

- (i) a material diminution in Executive’s compensation;
- (ii) a material diminution in Executive’s authority, duties, or responsibilities; or
- (iii) the Company requires Executive to move to another location of the Company or any affiliate of the Company and the distance between Executive’s former residence and new job site is at least 50 miles greater than the distance between Executive’s former residence and former job site.

Notwithstanding the foregoing, Executive shall notify Company in writing if he believes Good Reason exists. Such notice shall set forth in reasonable detail why Executive believes Good Reason exists and shall be provided to the Company within a period not to exceed 90 days of the initial existence of the condition alleged to give rise to Good Reason, upon the notice of which the Company shall have a period of 30 days during which it may remedy the condition.

f. **Termination by Executive Following a Change in Control.** Following a Change in Control of the Company, Executive shall be entitled to terminate his employment within 30 days following the later of the end of the calendar year within which such Change in Control occurs or the end of the taxable year of the Company within which such Change in Control occurs (such date, the “CIC Termination Date”). For purposes of this Agreement, a “Change in Control” of the Company shall be deemed to have occurred upon the occurrence of one of the following events, provided such event constitutes a change in control under Section 409A of the Code and the regulations and other guidance issued thereunder:

- (i) Any one person or more than one person acting as a group (as defined in accordance with Section 409A of the Code and the regulations and other guidance issued thereunder), acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes greater than fifty percent (50%) of the total fair market value or total voting power of the stock of the Company;
- (ii) Any one person or more than one person acting as a group (as defined in accordance with Section 409A of the Code and the regulations and other guidance issued thereunder), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the Company possessing 30% or more of the total voting power of the stock of such Company; or a majority of the individuals constituting the Board is replaced during any 12-month period by members whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election; or
- (iii) Any one person or more than one person acting as a group (as defined in accordance with Section 409A of the Code and the regulations and other guidance issued

thereunder), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 40% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions. For this purpose, gross fair market value means the value of the assets of the Company or the value of the assets being disposed of determined without regard to any liabilities associated with such assets.

## **5. Compensation and Benefits Upon Termination.**

a. If Executive's employment is terminated by reason of death or Disability, the Company shall pay Executive's Base Salary, at the rate then in effect, in accordance with the payroll policies of the Company, through the date of Executive's death or Disability (in the event of Executive's death, the payments will be made to Executive's beneficiaries or legal representatives) and Executive shall not be entitled to any further Base Salary or any applicable bonus, benefits or other compensation for that year or any future year, except as may be provided in an applicable benefit plan or program, or to any severance compensation of any kind, nature or amount.

b. If Executive's employment is terminated by Executive (i) without Good Reason or (ii) other than by the CIC Termination Date following a Change in Control; or by the Company for Cause, the Company will pay to Executive all Base Salary, at the rate then in effect, through the date of Executive's termination of active employment and Executive shall not be entitled to any further Base Salary or any applicable bonus, benefits or other compensation for that year or any future year, except as may be provided in an applicable benefit plan or program, or to any severance compensation of any kind, nature or amount.

c. If, during the term of this Agreement, (i) Executive terminates his employment for Good Reason, provided that such termination is within 12 months following the initial existence of one or more conditions giving rise to Good Reason; (ii) Executive terminates his employment by the CIC Termination Date following a Change in Control; or (iii) the Company terminates Executive's employment without Cause, the Company will pay to Executive all amounts otherwise payable under this Agreement, at the rate then in effect, through the date of Executive's termination, and the following paragraphs (i) through (vi) shall apply:

( i ) *Base Salary and Payment Schedule.* The Company shall pay Executive an amount equal to the greater of: (A) Executive's Base Salary, at the rate then in effect, otherwise payable through the term of this Agreement; or (B) Executive's Base Salary, at the rate then in effect, for one year. Such payment shall be made to Executive in a lump sum within 30 days following the date of Executive's termination of employment.

( i i ) *Bonus.* The Company shall pay Executive an amount equal to the average of the Executive's last three (3) gross annual bonuses multiplied by the greater of (A) one or (B) the number of years (including any fraction thereof) otherwise remaining through the term of this Agreement. Such payment shall be made to Executive in a lump sum within 30 days following the date of Executive's termination of employment.

(iii) *Medical Benefits.* Upon Executive's termination, Executive will be eligible to elect individual and dependent continuation group health and (if applicable) dental coverage, as provided under Section 4980B(f) of the Code ("COBRA"), for the maximum COBRA coverage period available, subject to all conditions and limitations (including payment of premiums and cancellation of coverage upon obtaining duplicate coverage or Medicare entitlement). If Executive or one or more of Executive's covered dependents is eligible for and elects COBRA coverage, then the Company shall pay the full cost of the COBRA coverage for the eighteen (18) month period following Executive's termination date. Executive (or dependents, as applicable) shall be responsible for paying the full cost of the COBRA coverage (including the two percentage administrative charge) after the earlier of (A) the expiration of eighteen months following Executive's termination date, or (B) eligibility for coverage under another employer's medical plan.

(iv) *Vacation.* Executive shall be entitled to a payment attributable to Base Salary, at the rate then in effect, for unused vacation accrued. Such payment shall be made to Executive in a lump sum within 30 days following the date of Executive's termination of employment.

(v) *Section 280G Limitation.* Notwithstanding anything to the contrary contained herein, in the case of a termination of employment subject to the excise tax under Code Section 280G, or any successor provision thereto, the maximum amount payable pursuant to this Section 5(c) shall be the maximum amount payable to Executive without triggering an excise tax under Code Section 280G, or any successor provision thereto. Any amount eliminated or reduced by application of this subsection to avoid the payment of an excise tax under Code Section 280G shall be made to payments that do not constitute "deferred compensation" within the meaning of Code Section 409A.

## **6. Stock and Options.**

**Release of Stock Restrictions.** The Company hereby agrees and acknowledges that in the event of Executive's death or Disability, or upon the Company's termination of Executive's employment without Cause or Executive's termination of his employment for Good Reason or by the CIC Termination Date following a Change in Control, all restrictions imposed by the Company with respect to all shares of stock and all stock options issued to Executive during his employment with the Company shall lapse and be of no further force or effect; provided, however, that such restrictions shall only lapse and be of no further force or effect to the extent such lapse shall not effect the character of such stock or stock options which are intended to qualify for the performance-based compensation exception to the limitations imposed under Code Section 162(m) as performance-based compensation on grant within the meaning of Code Section 162(m) and the regulations promulgated thereunder. The Company hereby further agrees and acknowledges that all shares of stock issued to Executive have been or will be registered under the Securities Act of 1933, as amended (the "Securities Act"). The Company further agrees to use all best efforts to deliver to Executive as soon as is practicable, certificates registered in Executive's name evidencing all previously unvested shares, which stock certificates shall contain no restrictive legend except as may be required under the Securities Act.

7. **Specified Employee Determination.** Notwithstanding any provision herein to the contrary, in the event that Executive is determined to be a specified employee within the meaning of Code Section 409A under the default provisions established thereunder, for purposes of any payment on termination of employment under this Agreement, payment(s) shall be made or begin, as applicable, on the first payroll date which is more than six months following the date of separation from service (or, if earlier, upon Executive's death), to the extent required to avoid any adverse tax consequences under Code Section 409A.

8. **Confidentiality/Settlement of Existing Rights.**

a. In order to induce Executive to enter into this Agreement, and in order to enable Executive to provide services on behalf of the Company, during the term of this Agreement, the Company will provide Executive with access to certain trade secrets and confidential or proprietary information belonging to the Company, which may include, but is not limited to, the identities, customs, and preferences of the Company's existing and prospective clients, customers, tenants or vendors; the identities and skills of the Company's employees; the Company's methods, procedures, analytical techniques, and models used in providing products and services, and in pricing or estimating the cost of such products and services; the Company's financial data, business and marketing plans, projections and strategies; customer lists and data; tenant lists and data, vendor lists and data; training manuals, policy manuals, and quality control manuals; software programs and information systems; and other information relating to the development, marketing, and provision of the Company's products, services, and systems (i.e., "Confidential Information"). Executive acknowledges that this Confidential Information constitutes valuable, special and unique property of the Company.

b. Executive agrees that, except as may be necessary in the ordinary course of performing his duties under this Agreement, Executive shall not, without prior express written consent of the Company (i) use such Confidential Information for Executive's own benefit or for the benefit of another; or (ii) disclose, directly or indirectly, such Confidential Information to any person, firm, corporation, partnership, association, or other entity (except for authorized personnel of the Company) at any time prior or subsequent to the termination or expiration of this Agreement.

c. By this Agreement, the Company is providing Executive with rights that Executive did not previously have. In exchange for the foregoing and the additional terms agreed to in this Agreement, Executive agrees that all Company Proprietary and Confidential Information learned or developed by Executive during past employment with the Company and all goodwill developed with the Company's clients, customers and other business contacts by Executive during past employment with the Company is now the exclusive property of the Company, and will be used only for the benefit of the Company, whether previously so agreed or not. Executive expressly waives and releases any claim or allegation that he should be able to use client and customer goodwill, specialized Company training, or Confidential Information, that was previously received or developed by Executive while working for the Company for the benefit of any competing person or entity.

9. **Return of Company Property.** Executive acknowledges that all memoranda, notes, correspondence, databases, discs, records, reports, manuals, books, papers, letters, CD Roms,

keys, passwords and access codes, client/customer/vendor/supplier profile data, contracts, orders, and lists, software programs, information and records, and other documentation (whether in draft or final form) relating to the Company's business, and any and all other documents containing Confidential Information furnished to Executive by any representative of the Company or otherwise acquired or developed by him in connection with his association with the Company (collectively, "*Recipient Materials*") shall at all times be the property of the Company. Within twenty-four (24) hours of the termination of his relationship with the Company, Executive promises to return to the Company any Recipient Materials that are in his possession, custody or control, regardless of whether such Materials are located in Executive's office, automobile, or home or on Executive's business or personal computers. Executive also shall authorize and permit the Company to inspect all computer drives used or maintained by Executive during his employment or consulting at the Company and, if necessary, to permit the Company to delete any Recipient Materials or Proprietary Information contained on such drives.

**10. Protective Covenants.** Executive agrees that the following covenants are reasonable and necessary agreements for the protection of the business interests covered in the fully enforceable, ancillary agreements set forth in this Agreement:

a . **Definitions.** "Competing Business" means any person or entity that provides services or products that would compete with or displace any services or products sold or being developed for sale by the Company during the term of this Agreement, or engages in any other activities so similar in nature or purpose to those of the Company that they would displace business opportunities or customers of the Company.

b . **Recordkeeping and Handling of Covered Items.** Executive agrees to keep and maintain current written records of all customer contacts, inventions, enhancement, and plans he develops regarding matters that are within the scope of the Company's business operations or that relate to research and development on behalf of the Company, and agrees to maintain any records necessary to inform the Company of such business opportunities. All Company Information and other Company documents and materials maintained or entrusted to Executive shall remain the exclusive property of the Company at all times; such materials shall, together with all copies thereof, be returned and delivered to the Company by Executive immediately without demand, upon termination of Executive's relationship with the Company, and shall be returned at a prior time if the Company so demands.

c . **No Interference with Employee/Independent Contractor Relationships.** Executive agrees that, through the later of (i) the expiration (but not earlier termination) of the three-year term (or any one-year renewal term) of this Agreement or (ii) two years after Executive's employment with the Company ceases, Executive will not, either directly or indirectly, participate in recruiting or hiring away any employees or independent contractors of the Company, or encourage or induce any employees, agents, independent contractors or investors of the Company to terminate their relationship with the Company, unless given the prior written consent of the Board to do so.

d . **No Interference with Client/Customer Relationships.** Executive agrees that, through the later of (i) the expiration (but not earlier termination) of the three-year term (or any one-year renewal term) of this Agreement or (ii) two years after Executive's employment with

the Company ceases, Executive will not induce or attempt to induce any client or customer of the Company to diminish, curtail, divert, or cancel its business relationship with the Company. The restrictions set forth in this paragraph shall apply worldwide, which the parties stipulate is a reasonable geographic area because of the scope of the Company's operations and Executive's activities.

e . **No Unfair Competition.** Executive agrees that, through the later of (i) the expiration (but not earlier termination) of the three-year term (or any one-year renewal term) of this Agreement or (ii) two years after Executive's employment with the Company ceases, Executive will not participate in, work for, or assist a Competing Business in any capacity (as owner, employee, consultant, contractor, officer, director, lender, investor, agent, or otherwise), unless given the prior written consent of the Board to do so. The restrictions set forth in this paragraph shall apply worldwide, which the parties stipulate is a reasonable geographic area because of the scope of the Company's operations and Executive's activities. This paragraph creates a narrowly tailored advance approval requirement in order to avoid unfair competition and irreparable harm to the Company and is not intended or to be construed as a general restraint from engaging in a lawful profession or a general covenant against competition, and is ancillary to the Company's agreement contained herein to employ Executive for a definite term. Nothing herein will prohibit ownership of less than 5% of the publicly traded capital stock of a corporation so long as this is not a controlling interest, or ownership of mutual fund investments. Executive acknowledges and agrees that this subsection e is reasonable and necessary to protect the trade secrets, confidential information and goodwill of the Company.

f. **Remedies.** In the event of breach or threatened breach by Executive of any provision of Section 10 hereof, the Company shall be entitled to: (i) injunctive relief by temporary restraining order, temporary injunction, and/or permanent injunction; (ii) recovery of all attorneys' fees and costs incurred by the Company in obtaining such relief; and (iii) any other legal and equitable relief to which may be entitled, including, without limitation, any and all monetary damages that the Company may incur as a result of said breach or threatened breach, in each case without the necessity of posting any bond. The Company may pursue any remedy available, including declaratory relief, concurrently or consecutively in any order as to any breach, violation, or threatened breach or violation, and the pursuit of one such remedy at any time will not be deemed an election of remedies or waiver of the right to pursue any other remedy.

g . **Early Resolution Conference** This Agreement is understood to be clear and enforceable as written and is executed by both parties on that basis. However, should Executive later challenge any provision as unclear, unenforceable or inapplicable to any competitive activity that Executive intends to engage in, Executive will first notify the Company in writing and meet with a Company representative and a neutral mediator (if the Company elects to retain one at its expense) to discuss resolution of any disputes between the parties. Executive will provide this notification at least fourteen (14) days before Executive engages in any activity on behalf of a Competing Business or engages in other activity that could foreseeably fall within a questioned restriction. The failure to comply with this requirement shall waive Executive's right to challenge the reasonable scope, clarity, applicability, or enforceability of the Agreement and its restrictions at a later time. All rights of both parties will be preserved if the Early Resolution Conference requirement is complied with even if no agreement is reached in the conference.

**11. Merger or Acquisition Disposition and Assignment.** In the event the Company should consolidate, or merge into another entity, or transfer all or substantially all of its assets or operations to another Person, or divide its assets or operations among a number of entities, this Agreement shall continue in full force and effect with regard to the surviving entity and may be assigned by the Company if necessary to achieve this purpose. Executive's obligations under this Agreement are personal in nature and may not be assigned by Executive to another Person.

**12. Notices.** All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed to have been delivered on the date personally delivered or on the date deposited in a receptacle maintained by the United States Postal Service for such purpose, postage prepaid, by certified mail, return receipt requested, or by express mail or overnight courier, addressed to the address indicated under the signature block for that party provided below. Either party may designate a different address by providing written notice of a new address to the other party.

**13. Severability.** If any provision contained in this Agreement is determined to be void, illegal or unenforceable by a court of competent jurisdiction, in whole or in part, then the other provisions contained herein shall remain in full force and effect as if the provision that was determined to be void, illegal, or unenforceable had not been contained herein. In making any such determination, the determining court shall deem any such provision to be modified so as to give it the maximum effect permitted by applicable law.

**14. Waiver, Construction and Modification.** The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party. This Agreement may not be modified, altered or amended except by written agreement of all the parties hereto.

**15. Governing Law and Venue.** It is the intention of the parties that the laws of the State of Texas should govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereto without regard to any contrary conflicts of laws principles. It is stipulated that Texas has a compelling state interest in the subject matter of this Agreement, and that Executive has or will have regular contact with Texas in the performance of this Agreement. The agreed upon venue and personal jurisdiction for the parties on any claims or disputes under this Agreement is Dallas County, Texas.

**16. Representation of Executive.** Executive hereby represents and warrants to the Company that Executive has not previously assumed any obligations that would prevent him from accepting, retaining and/or engaging in full employment with the Company, or which Executive could violate in the ordinary course of his duties for the Company. Further, Executive hereby represents and warrants to the Company that Executive has not previously assumed any obligations that are inconsistent with those contained in this Agreement, and that he will not use, disclose, or otherwise rely upon any confidential information or trade secrets derived from any previous employment, if Executive has any, in the performance of his duties on behalf of the Company. Further, Executive acknowledges that he has read and is fully familiar with the terms of this Agreement, has had a reasonable opportunity to consider this Agreement and to seek legal counsel, and after such review, Executive stipulates that the promises made by him in this

Agreement are not greater than necessary for the protection of the Company's good will and other legitimate business interests and do not create undue hardship for Executive or the public.

17. **Withholding Taxes.** The Company may withhold from any and all amounts payable under this Agreement such federal, state, local and any other applicable taxes as the Company determines in its sole discretion are required to be withheld pursuant to any applicable law or regulation.

18. **Compliance with Code Section 409A.** All provisions of this Agreement shall be interpreted in a manner consistent with Code Section 409A and the regulations and other guidance promulgated thereunder. Notwithstanding the preceding, the Company makes no representations concerning the tax consequences of Executive's participation in this Agreement under Code Section 409A or any other federal, state or local tax law. Executive's tax consequences will depend, in part, upon the application of relevant tax law, including Code Section 409A, to the relevant facts and circumstances.

19. **Complete Agreement.** Except for the existing Stock Option Agreements and Restricted Stock Agreements between the Company and Executive, which shall continue in full force and effect, this Agreement contains the complete agreement and understanding concerning the employment arrangement between the Executive and the Company or any of its subsidiaries or affiliates and will supersede all other agreements, understandings or commitments between the parties as to such subject matter. The parties agree that neither of them has made any representations concerning the subject matter of this Agreement except such representations as are specifically set forth herein. The parties agree that, except as specifically contemplated by this Agreement, this Agreement supersedes any other agreement, plan or arrangement that may now exist that may otherwise apply to or include Executive regarding employment, compensation, bonus, severance or retention benefits, that any such agreements, plans or arrangements are hereby terminated with respect to Executive and that none of the Company nor any subsidiary or affiliate of the Company will have any liability or obligation to Executive, his heirs, successors or beneficiaries with respect to the existence or termination of any such agreements, plans or arrangements, notwithstanding the terms of any of them.

20. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Company, its successors, legal representatives and assigns, and upon Executive, his heirs, executors, administrators, representatives and assigns. It is specifically agreed that upon the occurrence of any of the events specified in Section 11 above, the provisions of this Employment Agreement shall be binding upon and inure to the benefit of and be assumed by any surviving or resulting Person or any such Person to which such assets shall be transferred.

21. **Captions.** The Section and other headings used in this Agreement are for the convenience of the parties only, are not substantive and shall not affect the meaning or interpretation of any provision of this Agreement.

22. **Counterparts.** This Agreement may be signed in counterparts, which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties agree to each of the foregoing terms.

EXECUTIVE:

/s/ Tony Bartel  
Tony Bartel

Address: c/o GameStop Corp.  
625 Westport Parkway  
Grapevine, TX 76051

THE COMPANY:

GAMESTOP CORP.

By: /s/ David W. Carlson  
Name: David W. Carlson  
Title: Executive Vice President and Chief  
Financial Officer

Address: c/o GameStop Corp.  
625 Westport Parkway  
Grapevine, TX 76051

**AMENDED AND RESTATED**  
**EXECUTIVE EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (this "Agreement") was originally entered into on August 28, 2008, between Paul Raines ("Executive") and GameStop Corp. (the "Company"), collectively referred to as the "Parties," with an "Original Effective Date" of September 7, 2008 and is amended and restated as of the 31<sup>st</sup> day of December, 2008.

The Company has administered this Agreement in good faith compliance with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended ("Code"), and the regulations and other guidance promulgated thereunder, and the Parties wish to amend this employment agreement to comply with the requirements of Code Section 409A. Therefore, this Agreement is amended and restated to read as follows:

**1. Executive's Position/Duties.** During the term of this Agreement, Executive will be employed as the Chief Operating Officer of the Company, and shall have all of the duties and responsibilities of that position. Executive shall be considered a key employee of the Company and shall be entitled to all the Company benefits afforded to key employees. Executive agrees to dedicate all of his working time during normal working hours (other than during excused absences such as for illness or vacation), skill and attention to the business of the Company, agrees to remain loyal to the Company, and not to engage in any conduct that creates a conflict of interest to, or damages the reputation of, the Company. Executive shall abide by the Company's Code of Ethics and Code of Ethics for Senior Financial Officers, copies of which are attached hereto and incorporated herein. Executive shall relocate from Mableton, Georgia to the area of the Company's executive offices in Grapevine, Texas as soon as reasonably practicable.

**2. Term of Employment.** Executive's employment under this Agreement will commence on the Original Effective Date, and will continue for a period of three years, unless terminated earlier in accordance with the provisions of this Agreement. At the expiration (but not earlier termination) of the term (including any renewal term), the term of this Agreement shall automatically renew for an additional period of one year, unless either party has given the other party written notice of non-renewal at least six months prior to such expiration.

**3. Compensation.**

(a) **Base Salary.** During the term of this Agreement, the Company shall provide Executive with a base salary of no less than nine hundred thousand dollars (\$900,000.00) per year, as adjusted from time to time, to be paid in accordance with the Company's normal payroll policies ("Base Salary").

(b) **Bonuses/Distributions.**

(i) The Executive shall be entitled to a one million dollar (\$1,000,000) cash signing bonus ("Signing Bonus") payable within two weeks following the Original Effective Date. The Signing Bonus shall be considered earned over the original three-year term of this Agreement. Accordingly, in the event Executive's employment with the Company is terminated prior to the third anniversary of the Original Effective Date by the Company for Cause (as

defined below) or by Executive without Good Reason (as defined below), then Executive shall repay the Company the unearned portion of the Signing Bonus (i.e. the prorated amount of the Signing Bonus relating to the remainder of the original three-year term). At any given time, the amount of the Signing Bonus Executive shall be entitled to retain shall be equal to the amount of the Signing Bonus multiplied by a fraction, the numerator of which is the aggregate number of days of employment measured from the Original Effective Date during which Executive shall have rendered services to the Company, and the denominator of which is 1,095.

(ii) In addition to the Signing Bonus, during the term of this Agreement, the Company shall provide Executive with an annual bonus for each fiscal year of the Company based on the formula and targets established for such fiscal year under and in accordance with the Company's Supplemental Compensation Plan as then in effect (the "Bonus Plan"), a copy of the current version of which is attached hereto and incorporated herein. Executive may receive additional bonuses at the discretion of the Board of Directors of the Company (the "Board"). Executive's target annual bonus under the Bonus Plan shall be no less than 100% of Base Salary, with up to an additional 25% of the target annual bonus if the established target is exceeded by a certain percentage, as provided in the Bonus Plan.

(c) **Benefits.** Executive shall be entitled to all benefits, including, but not limited to, insurance programs (including any individual or group life insurance program the Company adopts), pension plans and other retirement benefits, four weeks paid vacation per year (with a year for these purposes being July 1 to June 30, and with said four-weeks being pro rated for any partial year of employment during the term), sick leave, and expense accounts, in each instance equal to the greater of the benefits afforded other management personnel or the amount the Board determines. Benefits shall include relocation benefits in accordance with Company policies, to reimburse Executive for his costs in relocating to the Grapevine, Texas area, including legal fees, realtor fees, moving costs, travel costs and other expenses reasonably related to the sale of his residence in Mableton, Georgia and his location of and acquisition of a residence in the Grapevine, Texas area. If necessary, the Company will pay all reasonable costs and expenses for a temporary residence for Executive in the Grapevine, Texas area for up to one year in connection with his relocation, including, but not limited to, rent, homeowner's or renter's insurance and utilities.

(d) **Expenses.** The Company shall reimburse Executive for reasonable expenses incurred in the performance of his duties hereunder and in furtherance of the business of the Company, in accordance with the policies and procedures of the Company. The Company shall also reimburse Executive for his reasonable legal expenses incurred in connection with the negotiation and execution of this Agreement. All reimbursements under this paragraph shall be made promptly after submission to the Company of evidence in reasonable detail of the incurrence of such expenses.

(e) **Reimbursement of Expenses.** Notwithstanding any provision in this Section 3 to the contrary, no expenses incurred after the term of this Agreement shall be subject to reimbursement, except to the extent provided under this Section 3(e). The amount of expenses eligible for reimbursement during a year shall not affect the expenses eligible for reimbursement in any other year. Reimbursement of an eligible expense shall be made in accordance with the Company's policies and practices and as otherwise provided herein, provided that in no event

shall reimbursement be made after the last day of the year following the year in which the expense was incurred. The right to reimbursement is not subject to liquidation or exchange for another benefit.

(f) **Restricted Stock.** On the Original Effective Date, Executive received a grant of 60,000 shares of Company common stock under and in accordance with the Company's Incentive Plan then in effect (the "Incentive Plan"), a copy of the current version of which is attached hereto and incorporated herein, vesting in equal annual installments on the first, second, and third anniversaries of the Original Effective Date (subject to employment with the Company on each of such dates and all other terms of the Incentive Plan). In addition, each year during the term of this Agreement, subject to approval each year by the Compensation Committee of the Board, Executive shall receive as part of the Company's annual stock grant to its employees, at least 40,000 shares of Company common stock under and in accordance with the Incentive Plan, vesting in equal annual installments on the first, second, and third anniversaries of the date of grant (subject to employment with the Company on each of such dates and all other terms of the Incentive Plan).

**4. Termination of Employment.** Executive's employment with the Company may be terminated as follows:

( a ) **Death.** In the event of Executive's death, Executive's employment will be terminated immediately.

( b ) **Disability.** In the event of Executive's Disability, as defined below, Executive's employment will be terminated immediately. "Disability" shall mean a written determination by a physician mutually agreeable to the Company and Executive (or, in the event of Executive's total physical or mental disability, Executive's legal representative) that Executive is physically or mentally unable to perform his duties of Chief Operating Officer under this Agreement and that such disability can reasonably be expected to continue for a period of six consecutive months or for shorter periods aggregating 180 days in any 12-month period.

( c ) **Termination by the Company for Cause.** The Company shall be entitled to terminate Executive's employment at any time if it has "**Cause,**" which shall mean any of the following: (i) conviction of, or plea of nolo contendere to, a felony or any crime involving fraud or dishonesty; (ii) willful misconduct that results in a material and demonstrable damage to the business or reputation of the Company; (iii) breach by Executive of any of the covenants contained in Sections 8, 10(c), 10(d) or 10(e) below; or (iv) willful refusal by Executive to perform his obligations under this Agreement or the lawful direction of the Board that is not the result of Executive's death, Disability, physical incapacity or Executive's termination of the Agreement, and that is not corrected within 30 days following written notice thereof to Executive by the Company, such notice to state with specificity the nature of the willful refusal.

( d ) **Without Cause.** Either the Company or Executive may terminate Executive's employment at any time without cause upon written notice.

( e ) **Termination by Executive with Good Reason.** Executive shall be entitled to terminate his employment within 12 months after any of the following events (each of which shall constitute “Good Reason”):

(i) a material diminution in Executive’s compensation;

(ii) a material diminution in Executive’s authority, duties, or responsibilities;

(iii) other than the relocation to the Grapevine, Texas area, the Company requires Executive to move to another location of the Company or any affiliate of the Company and the distance between Executive’s former residence and new job site is at least 50 miles greater than the distance between Executive’s former residence and former job site; or

(iv) the Executive is no longer reporting to Richard Fontaine, the Company’s Executive Chairman, or Daniel DeMatteo, the Company’s Chief Executive Officer, unless the Executive instead is reporting directly to the Board or its Chairman.

Notwithstanding the foregoing, Executive shall notify Company in writing if he believes Good Reason exists. Such notice shall set forth in reasonable detail why Executive believes Good Reason exists and shall be provided to the Company within a period not to exceed 90 days of the initial existence of the condition alleged to give rise to Good Reason, upon the notice of which the Company shall have a period of 30 days during which it may remedy the condition.

(f) **Termination by Executive Following a Change in Control.** Following a Change in Control of the Company, Executive shall be entitled to terminate his employment within 30 days following the later of the end of the calendar year within which such Change in Control occurs or the end of the taxable year of the Company within which such Change in Control occurs (such date, the “CIC Termination Date”). For purposes of this Agreement, a “Change in Control” of the Company shall be deemed to have occurred upon the occurrence of one of the following events, provided such event constitutes a change in control under Section 409A of the Code and the regulations and other guidance issued thereunder:

(i) Any one person or more than one person acting as a group (as defined in accordance with Section 409A of the Code and the regulations and other guidance issued thereunder), acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes greater than fifty percent (50%) of the total fair market value or total voting power of the stock of the Company;

(ii) Any one person or more than one person acting as a group (as defined in accordance with Section 409A of the Code and the regulations and other guidance issued thereunder), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the Company possessing 30% or more of the total voting power of the stock of such Company; or a majority of the individuals constituting the Board is replaced during any 12-month period by members whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election; or

(iii) Any one person or more than one person acting as a group (as defined in accordance with Section 409A of the Code and the regulations and other guidance issued thereunder), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 40% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions. For this purpose, gross fair market value means the value of the assets of the Company or the value of the assets being disposed of determined without regard to any liabilities associated with such assets.

## **5. Compensation and Benefits Upon Termination.**

(a) If Executive's employment is terminated by reason of death or Disability, the Company shall pay Executive's Base Salary, at the rate then in effect, in accordance with the payroll policies of the Company, through the date of Executive's death or Disability (in the event of Executive's death, the payments will be made to Executive's beneficiaries or legal representatives) and Executive shall not be entitled to any further Base Salary or any applicable bonus, benefits or other compensation for that year or any future year, except as may be provided in an applicable benefit plan or program, or to any severance compensation of any kind, nature or amount.

(b) If Executive's employment is terminated by Executive (i) without Good Reason or (ii) other than by the CIC Termination Date following a Change in Control; or by the Company for Cause, the Company will pay to Executive all Base Salary, at the rate then in effect, through the date of Executive's termination of employment and Executive shall not be entitled to any further Base Salary or any applicable bonus, benefits or other compensation for that year or any future year, except as may be provided in an applicable benefit plan or program, or to any severance compensation of any kind, nature or amount.

(c) If, during the term of this Agreement, (i) Executive terminates his employment for Good Reason, provided that such termination is within 12 months following the initial existence of one or more conditions giving rise to Good Reason; (ii) Executive terminates his employment by the CIC Termination Date following a Change in Control; or (iii) the Company terminates Executive's employment without Cause, the Company will pay to Executive all amounts otherwise payable under this Agreement, at the rate then in effect, through the date of Executive's termination of employment, and the following paragraphs (i) through (v) shall apply:

( i ) *Base Salary and Payment Schedule.* The Company shall pay Executive an amount equal to the greater of (A) Executive's Base Salary, at the rate then in effect, otherwise payable through the term of this Agreement, or (B) Executive's Base Salary, at the rate then in effect, for one year. Such payment shall be made to Executive in a lump sum of cash within 30 days following the date of Executive's termination of employment.

( i i ) *Bonus.* The Company shall pay Executive an amount equal to the average of the Executive's last three (or such lesser number if Executive has not received three annual bonuses) gross annual bonuses multiplied by the greater of (A) one or (B) the number of years (including any fraction thereof) otherwise remaining through the term of this Agreement. Such

payment shall be made to Executive in a lump sum of cash within 30 days following the date of Executive's termination of employment.

(iii) *Medical Benefits.* Upon Executive's termination of employment, Executive will be eligible to elect individual and dependent continuation group health and (if applicable) dental coverage, as provided under Section 4980B(f) of the Code ("COBRA"), for the maximum COBRA coverage period available, subject to all conditions (including cancellation of coverage upon obtaining duplicate coverage or Medicare entitlement). If Executive or one or more of Executive's covered dependents is eligible for and elects COBRA coverage, then the Company shall pay the full cost of the COBRA coverage (including the two percent administrative charge) for the eighteen (18) month period following the date of Executive's termination of employment. Executive (or dependents, as applicable) shall be responsible for paying the full cost of the COBRA continuation coverage (including the two percent administrative charge) after the expiration of eighteen months following the date of Executive's termination of employment.

(iv) *Vacation.* Executive shall be entitled to a payment attributable to Base Salary, at the rate then in effect, for unused vacation accrued. Such payment shall be made to Executive in a lump sum of cash within 30 days following the date of Executive's termination of employment.

(v) *Section 280G Limitation.* Notwithstanding anything to the contrary contained herein, in the case of a termination of employment subject to the excise tax under Code Section 280G, or any successor provision thereto, the maximum amount payable pursuant to this Section 5(c) shall be the maximum amount payable to Executive without triggering an excise tax under Code Section 280G, or any successor provision thereto. Any amount eliminated or reduced by application of this subsection to avoid the payment of an excise tax under Code Section 280G shall be made to payments that do not constitute "deferred compensation" within the meaning of Code Section 409A.

## **6. Stock and Options.**

**Release of Stock Restrictions.** The Company agrees that in the event of Executive's death or Disability, or upon the Company's termination of Executive's employment without Cause or Executive's termination of his employment for Good Reason or by the CIC Termination Date following a Change in Control, all restrictions imposed by the Company with respect to all shares of stock and all stock options issued to Executive during his employment with the Company shall lapse and be of no further force or effect; provided, however, that such restrictions shall only lapse and be of no further force or effect to the extent such lapse shall not effect the character of such stock or stock options which are intended to qualify for the performance-based compensation exception to the limitations imposed under Code Section 162(m) as performance-based compensation on grant within the meaning of Code Section 162(m) and the regulations promulgated thereunder. The Company further agrees that all shares of stock issued to Executive have been or will be registered under the Securities Act of 1933, as amended (the "Securities Act"). The Company further agrees to use all best efforts to deliver to Executive as soon as is practicable, certificates registered in Executive's name evidencing all

previously unvested shares, which stock certificates shall contain no restrictive legend except for those the Securities Act may require.

7. **Specified Employee Determination.** Notwithstanding any provision herein to the contrary, in the event that Executive is determined to be a specified employee within the meaning of Code Section 409A under the default provisions established thereunder, for purposes of any payment on termination of employment under this Agreement, payment(s) shall be made or begin, as applicable, on the first payroll date which is more than six months following the date of separation from service (or, if earlier, upon Executive's death), to the extent required to avoid any adverse tax consequences under Code Section 409A.

8. **Confidentiality/Settlement of Existing Rights.**

(a) In order to induce Executive to enter into this Agreement, and in order to enable Executive to provide services on behalf of the Company, during the term of this Agreement, the Company will provide Executive with access to certain trade secrets and confidential or proprietary information belonging to the Company, which may include, but is not limited to, the identities, customs, and preferences of the Company's existing and prospective, customers, tenants or vendors; the identities and skills of the Company's employees; the Company's methods, procedures, analytical techniques, and models used in providing products and services, and in pricing or estimating the cost of such products and services; financial data, business and marketing plans, projections, and strategies; customer, tenant and vendor lists and data; training manuals, policy manuals, and quality control manuals; software programs and information systems; and other information relating to the development, marketing, and provision of the Company's products, services, and systems (i.e. "Confidential Information"). Executive acknowledges that this Confidential Information constitutes valuable, special and unique property of the Company.

(b) Executive agrees that, except as may be necessary in the ordinary course of performing his duties under this Agreement, Executive shall not, without prior express written consent of the Company (i) use such Confidential Information for Executive's own benefit or for the benefit of another, or (ii) disclose, directly or indirectly, such Confidential Information to any Person (except for authorized personnel of the Company) at any time prior or subsequent to the termination or expiration of this Agreement.

(c) By this Agreement, the Company is providing Executive with rights that Executive did not previously have. In exchange for the foregoing and the additional terms in this Agreement, Executive agrees that all Confidential Information Executive developed or received during employment with the Company and all goodwill Executive developed with the Company's, customers, and other business contacts during employment with the Company is the exclusive property of the Company, and Executive will use the Confidential Information only for the benefit of the Company. Executive expressly waives any claim that he should be able to use customer goodwill, specialized Company training he received, or Confidential Information that Executive developed or received while working for the Company for the benefit of any competing Person.

9. **Return of Company Property.** Executive acknowledges that all memoranda, notes, correspondence, databases, discs, records, reports, manuals, books, papers, letters, CD Roms, keys, passwords and access codes, customer/vendor/supplier profile data, contracts, orders, lists, software programs, information, records, and other documentation (whether in draft or final form) relating to the Company's business, and all other documents containing Confidential Information any representative of the Company furnishes to Executive or Executive otherwise acquires or develops in connection with his association with the Company (collectively, "*Recipient Materials*") shall at all times be the property of the Company. Promptly after the termination of his relationship with the Company, Executive promises to return to the Company any Recipient Materials that are in his possession, custody or control, regardless of whether such Materials are located in Executive's office, automobile, or home, or on Executive's business or personal computers. Executive also shall authorize and permit the Company to inspect all computer drives Executive uses or maintains during his employment at the Company and, if necessary, to permit the Company to delete any Recipient Materials contained on such drives.

10. **Protective Covenants.** Executive agrees that the following covenants are reasonable and necessary agreements for the protection of the business interests covered in the fully enforceable, ancillary agreements set forth in this Agreement:

( a ) **Definitions.** "Competing Business" means any Person that provides services or products that would compete with or displace any services or products the Company sells or develops for sale during the term of this Agreement, or engages in any other activities so similar in nature to those of the Company that they would displace business opportunities or customers of the Company.

( b ) **No Interference with Employee/Independent Contractor Relationships.** Executive agrees that, through the latter of (i) the expiration (but not earlier termination) of the three-year term (or any one-year renewal term) of this Agreement or (ii) one year after Executive's employment with the Company ceases, Executive will not, either directly or indirectly, participate in recruiting or hiring away any employees or independent contractors of the Company, or encourage or induce any agents, employees, independent contractors, or investors of the Company to terminate their relationship with the Company, unless given the prior written consent of the Board to do so.

( c ) **No Interference with Client/Customer Relationships.** Executive agrees that, through the latter of (i) the expiration (but not earlier termination) of the three-year term (or any one-year renewal term) of this Agreement or (ii) one year after Executive's employment with the Company ceases, Executive will not induce or attempt to induce any customer of the Company to diminish, curtail, divert, or cancel its business relationship with the Company. The restrictions set forth in this paragraph shall apply worldwide, which the parties stipulate is a reasonable geographic area because of the scope of the Company's operations and Executive's activities.

( d ) **No Unfair Competition.** Executive agrees that, through the latter of (i) the expiration (but not earlier termination) of the three-year term (or any one-year renewal term) of this Agreement or (ii) one year after Executive's employment with the Company ceases, Executive will not participate in, work for or assist a Competing Business in any capacity (as owner, employee, consultant, contractor, officer, director, lender, investor, agent, or otherwise),

unless given the prior written consent of the Board to do so. The restrictions set forth in this paragraph shall apply worldwide, which the parties stipulate is a reasonable geographic area because of the scope of the Company's operations and Executive's activities. This paragraph creates a narrowly-tailored advance approval requirement in order to avoid unfair competition and irreparable harm to the Company and is not intended to be a general restraint from engaging in a lawful profession or a general covenant against competition, and is ancillary to the Company's agreement contained herein to employ Executive for a definite term. Nothing herein will prohibit ownership of less than 5% of the publicly traded capital stock of a corporation so long as this is not a controlling interest, or ownership of mutual fund investments. Executive acknowledges and agrees that this subsection (d) is reasonable and necessary to protect the trade secrets, confidential information and goodwill of the Company.

(e) **Remedies.** In the event of breach or threatened breach by Executive of any provision of Section 10 hereof, the Company shall be entitled to (i) injunctive relief by temporary restraining order, temporary injunction, and/or permanent injunction, (ii) recovery of all attorneys' fees and costs the Company incurs in obtaining such relief, and (iii) any other legal and equitable relief to which the Company may be entitled, including, without limitation, all monetary damages that the Company may incur as a result of said breach or threatened breach, in each case without the necessity of posting any bond. The Company may pursue any remedy available, including, but not limited to, declaratory relief, concurrently or consecutively in any order as to any breach or threatened breach, and the pursuit of one such remedy at any time will not be deemed an election of remedies or waiver of the right to pursue any other remedy.

(f) **Early Resolution Conference.** This Agreement is understood to be clear and enforceable as written and is executed by both parties on that basis. However, should Executive later challenge any provision as unclear, unenforceable, or inapplicable to any competitive activity in which Executive intends to engage, Executive will first notify the Company in writing and meet with a Company representative and a neutral mediator (if the Company elects to retain one at its expense) to discuss resolution of any disputes between the parties. Executive will provide this notification at least 14 days before Executive engages in any activity on behalf of a Competing Business or engages in other activity that could foreseeably fall within a questioned restriction. The failure to comply with this requirement shall waive Executive's right to challenge the reasonable scope, clarity, applicability, or enforceability of the Agreement and its restrictions at a later time. If the parties participate in early resolution conference on the terms described above, all rights of both parties will be preserved, even if no agreement is reached in the conference.

**11. Merger or Acquisition Disposition and Assignment.** In the event the Company should consolidate, or merge into another entity, or transfer all or substantially all of its assets or operations to another Person, or divide its assets or operations among a number of entities, this Agreement shall continue in full force and effect with regard to the surviving entity or entities and the Company may assign this Agreement if necessary to achieve this purpose. Executive's obligations under this Agreement are personal in nature and Executive may not assign this Agreement to another Person.

**12. Notices.** All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed to have been delivered on the date personally delivered

or on the date deposited in a receptacle maintained by the United States Postal Service for such purpose, postage prepaid, by certified mail, return receipt requested, or by express mail or overnight courier, addressed to the address indicated under the signature block for that party provided below. Either party may designate a different address by providing written notice of a new address to the other party.

**13. Severability.** If any provision contained in this Agreement is determined to be void, illegal or unenforceable by a court of competent jurisdiction, in whole or in part, then the other provisions contained herein shall remain in full force and effect as if the provision that was determined to be void, illegal, or unenforceable had not been contained herein. In making any such determination, the determining court shall deem any such provision to be modified so as to give it the maximum effect permitted by applicable law.

**14. Waiver, Construction and Modification.** The waiver by any party hereto of a breach of any provision of this Agreement shall not operate as a waiver of any subsequent breach by any party. This Agreement may not be modified except by written agreement of the parties hereto.

**15. Governing Law and Venue.** It is the intention of the parties that the laws of the State of Texas should govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereto without regard to any contrary conflicts of laws principles. It is stipulated that Texas has a compelling state interest in the subject matter of this Agreement, and that Executive has or will have regular contact with Texas in the performance of this Agreement. The agreed upon venue and personal jurisdiction for the parties on any claims or disputes under this Agreement is Dallas County, Texas.

**16. Representation of Executive.** Executive hereby represents and warrants to the Company that Executive has not previously assumed any obligations that would prevent him from engaging in full employment with the Company, or that Executive could violate in the ordinary course of his duties for the Company. Further, Executive hereby represents and warrants to the Company that Executive has not previously assumed any obligations that are inconsistent with those contained in this Agreement, and that he will not use, disclose, or otherwise rely upon any confidential information or trade secrets derived from any previous employment, if Executive has any, in the performance of his duties on behalf of the Company. Further, Executive acknowledges that he has read this Agreement, has had a reasonable opportunity to consider this Agreement and to seek legal counsel, and after such review, Executive stipulates that his promises in this Agreement are not greater than necessary for the protection of the Company's good will and other legitimate business interests and do not create undue hardship for Executive.

**17. Withholding Taxes.** The Company may withhold from any and all amounts payable under this Agreement such federal, state, local and any other applicable taxes as the Company determines in its sole discretion are required to be withheld pursuant to any applicable law or regulation.

**18. Compliance with Code Section 409A.** All provisions of this Agreement shall be interpreted in a manner consistent with Code Section 409A and the regulations and other guidance promulgated thereunder. Notwithstanding the preceding, the Company makes no

representations concerning the tax consequences of Executive's participation in this Agreement under Code Section 409A or any other federal, state or local tax law. Executive's tax consequences will depend, in part, upon the application of relevant tax law, including Code Section 409A, to the relevant facts and circumstances.

**19. Complete Agreement.** This Agreement contains the complete agreement concerning the employment arrangement between Executive and the Company and any of its subsidiaries or affiliates and will supersede all other agreements between such parties as to such subject matter. The parties agree that neither of them has made any representations concerning the subject matter of this Agreement except such representations as are specifically set forth herein. The parties agree that, except as this Agreement otherwise specifies, this Agreement supersedes any other agreement that may now exist that may apply to Executive regarding employment, compensation, bonus, severance or retention benefits, that any such agreement is hereby terminated with respect to Executive and that none of the Company nor any subsidiary or affiliate of the Company will have any liability or obligation to Executive, his heirs, successors or beneficiaries with respect to the existence or termination of any such agreement, notwithstanding their terms.

**20. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Company, its successors, legal representatives and assigns, and upon Executive, his heirs, executors, administrators and representatives. It is specifically agreed that upon the occurrence of any of the events specified in Section 11 above, the provisions of this Employment Agreement shall be binding upon and inure to the benefit of and be assumed by any surviving or resulting Person or any such Person to which such assets shall be transferred.

**21. Captions.** The Section and other headings used in this Agreement are for the convenience of the parties only, are not substantive and shall not affect the meaning or interpretation of any provision of this Agreement.

**22. Counterparts.** This Agreement may be signed in counterparts, which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties agree to each of the foregoing terms.

EXECUTIVE:

/s/ Paul Raines  
Paul Raines

Address: c/o GameStop Corp.  
625 Westport Parkway  
Grapevine, TX 76051

THE COMPANY:

GAMESTOP CORP.

By: /s/ David W. Carlson  
Name: David W. Carlson  
Title: Executive Vice President and Chief  
Financial Officer

Address: c/o GameStop Corp.  
625 Westport Parkway  
Grapevine, TX 76051