

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

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FILER

**CARMIKE CINEMAS INC**

CIK: **799088** | IRS No.: **581469127** | State of Incorp.: **DE** | Fiscal Year End: **1231**  
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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 8-K**

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

**Date of Report (Date of earliest event reported): May 15, 2013**

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**Carmike Cinemas, Inc.**

(Exact Name of Registrant as Specified in its Charter)

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**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**000-14993**  
(Commission  
File Number)

**58-1469127**  
(IRS Employer  
Identification Number)

**1301 First Avenue, Columbus,  
Georgia**  
(Address of Principal Executive Offices)

**31901**  
(Zip Code)

**Registrant's telephone number, including area code: (706) 576-3400**

**Not applicable**

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

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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:

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

On May 15, 2013, Carmike Cinemas, Inc. (the “Company”) made changes to the compensatory arrangements with certain employees, including S. David Passman III, Richard B. Hare, Fred W. Van Noy, Daniel E. Ellis and John Lundin, the Company’s current named executive officers (together, the “NEOs”). These changes resulted from a review by the Compensation and Nominating Committee (the “Committee”) of the Company’s Board of Directors of the Company’s outstanding executive compensation arrangements. In connection with this review, the Committee received the input of its independent compensation consultant regarding current market practices in executive compensation.

To effect the changes resulting from the review described above, the Company and the NEOs entered into the following:

- amendments to outstanding stock option grant agreements;
- amendments to performance share certificates for grants of performance shares made in 2012 and 2013;
- with respect to Mr. Passman, an amended and restated employment agreement; and
- with respect to the other NEOs, amended and restated separation agreements.

***Changes to Equity Award Vesting Provisions***

The amendments described above made the following changes to vesting provisions applicable to certain of the NEOs’ equity awards. In the case of death or disability:

- to the extent not previously provided in the option agreement, outstanding stock options will become vested upon termination of employment as a result of death or disability and remain exercisable for the shorter of twelve months or the remaining term of the option; and
- outstanding performance shares will become vested as a result of a “separation from service” (within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”)), to the extent of actual results for performance periods completed prior to the separation and at target (on a pro-rated basis) for the performance period in which the separation occurs, and forfeited for performance periods beginning after the separation.

In the case of termination without cause:

- full vesting for stock options was eliminated; and
- full vesting for restricted stock granted before 2013 was eliminated.

In the case of a change in control, outstanding performance share awards will become fully vested:

- with respect to shares earned based on actual results for performance periods completed prior to the change in control; and
- at target for the performance period in which the change of control occurs and for future performance periods.

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In the case of reaching retirement age (which is defined as age 55 with ten years of service or age 60 with five years of service):

outstanding stock options will become vested upon voluntary termination or involuntary termination without cause after reaching retirement age, and will remain exercisable for the shorter of three years or the remaining term of the option; and

outstanding performance shares will become vested upon voluntary separation from service or involuntary separation from service without cause after reaching retirement age, to the following extent:

shares earned based on actual results for performance periods completed prior to the separation will vest;

shares earned based on actual results (pro-rated) for the performance period in which the separation occurs will vest; and

shares with respect to performance periods beginning after the separation will be forfeited.

### ***Changes to Cash Severance Arrangements***

The amendments also changed the cash severance arrangements for the NEOs other than Mr. Passman. In connection with a termination without cause or a resignation for good reason, in each case in connection with a change in control, target annual bonus will be included in the calculation of the cash severance amount for such NEOs.

### ***Other Changes***

The amendments also made certain other changes to Mr. Passman's employment agreement and the separation agreements with the other NEOs:

for Mr. Ellis, the offset feature for his cash severance in connection with future employment has been removed;

for Mr. Lundin, certain amendments related to Section 409A of the Code were made to his existing separation agreement prior to its amendment and restatement; and

other clarifying, conforming and updating changes have been made to the provisions of the separation agreements and Mr. Passman's employment agreement.

### ***Forms of Amendments***

The agreements evidencing the amendments described above have been attached to this Current Report on Form 8-K as follows:

A form of the amended and restated separation agreement for the NEOs other than Mr. Passman is attached hereto as Exhibit 10.1.

Mr. Passman's amended and restated employment agreement is attached hereto as Exhibit 10.2.

The Section 409A-related amendments to Mr. Lundin's separation agreement are attached hereto as Exhibit 10.3.

A form of the amendment to the performance share certificates granted in 2012 and 2013 is attached hereto as Exhibit 10.4.

A form of the various amendments made to outstanding option certificates is attached hereto as Exhibit 10.5.

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**Item 9.01. Financial Statements and Exhibits.****(d) Exhibits.**

- Exhibit 10.1 Form of Amended and Restated Separation Agreement, dated May 15, 2013.
- Exhibit 10.2 Amended and Restated Employment Agreement between Carmike Cinemas, Inc. and S. David Passman III, dated May 15, 2013.
- Exhibit 10.3 Amendment No. 1 to Separation Agreement between Carmike Cinemas, Inc. and John Lundin, dated May 15, 2013.
- Exhibit 10.4 Form of Amendments to 2012 and 2013 Performance Share Certificates, dated May 15, 2013.
- Exhibit 10.5 Form of Amendments to Option Certificates, dated May 15, 2013.

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**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.

CARMIKE CINEMAS, INC.

Date: May 16, 2013

By: /s/ Daniel E. Ellis

Daniel E. Ellis

Senior Vice President, General Counsel and Secretary

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## EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
Exhibit 10.1	Form of Amended and Restated Separation Agreement, dated May 15, 2013.
Exhibit 10.2	Amended and Restated Employment Agreement between Carmike Cinemas, Inc. and S. David Passman III, dated May 15, 2013.
Exhibit 10.3	Amendment No. 1 to Separation Agreement between Carmike Cinemas, Inc. and John Lundin, dated May 15, 2013.
Exhibit 10.4	Form of Amendments to 2012 and 2013 Performance Share Certificates, dated May 15, 2013.
Exhibit 10.5	Form of Amendments to Option Certificates, dated May 15, 2013.

The following executive officers have entered into this Amended and Restated Separation Agreement, a form of which follows, with Carmike Cinemas, Inc.:

Name

Richard B. Hare  
Fred W. Van Noy  
Daniel E. Ellis  
John Lundin

**AMENDED AND RESTATED SEPARATION AGREEMENT**

THIS AMENDED AND RESTATED SEPARATION AGREEMENT (this "Agreement") dated as of May 15, 2013, amends and restates that certain Separation Agreement, as amended through the date hereof (the "Prior Agreement"), made and entered into as of the day of , (the "Commencement Date") by and between Carmike Cinemas, Inc. ("Carmike") and ("Executive").

**R E C I T A L S**

**WHEREAS**, Executive currently is employed by Carmike as Carmike' s ; and

**WHEREAS**, Carmike and Executive have entered into the Prior Agreement; and

**WHEREAS**, Carmike and Executive desire to amend and restate the Prior Agreement in the form of this Agreement which sets forth the terms and conditions which will be applicable if (i) Carmike terminates Executive' s employment without Cause before the beginning or after the end of his or her Protection Period or (ii) Carmike terminates Executive' s employment without Cause or Executive resigns for Good Reason during his or her Protection Period.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Carmike and Executive hereby agree as follows:

**§ 1. Term**

The term of this Agreement shall begin on the Commencement Date and shall end on , (the "Initial Term"), unless extended or earlier terminated in accordance with the terms of this Agreement (the Initial Term and any extension or earlier termination thereof is referred to as the "Term"). If not earlier terminated, the Term automatically shall be extended for one additional year on the second anniversary of the Commencement Date and for one additional year on each anniversary of the Commencement Date thereafter unless Carmike, at least ninety (90) days before any such anniversary date, gives written notice to Executive that there will be no such extension.



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## § 2. Definitions

2.1 Cause. The term “Cause” for purposes of this Agreement:

(a) shall before the beginning or after the end of Executive’ s Protection Period mean:

(1) Executive is convicted of, pleads guilty to, or confesses or otherwise admits to any felony or any act of fraud, misappropriation or embezzlement or Executive otherwise engages in a fraudulent act or course of conduct;

(2) There is any act or omission by Executive involving malfeasance or negligence in the performance of Executive’ s duties and responsibilities for Carmike, or the exercise of Executive’ s powers as an executive of Carmike, where such act or omission is reasonably likely to materially and adversely affect Carmike’ s business;

(3) (A) Executive breaches any of the provisions of § 4 or (B) Executive violates any provision of any code of conduct adopted by Carmike which applies to Executive and if the consequence to such violation for any employee subject to such code of conduct ordinarily would be a termination of his or her employment by Carmike; and

(4) any determination that “Cause” exists under this § 2.1(a) shall be made in good faith by the affirmative vote of at least a majority of the members of the Board then in office at a meeting called and held for purposes of making such determination.

(b) shall during Executive’ s Protection Period mean:

(1) Executive is convicted of, pleads guilty to, or confesses or otherwise admits to any felony or any act of fraud, misappropriation or embezzlement or Executive otherwise engages in a fraudulent act or course of conduct which has a material and adverse effect on Carmike;

(2) There is any act or omission by Executive involving malfeasance or gross negligence in the performance of Executive’ s duties and responsibilities for Carmike, or the exercise of Executive’ s powers as an executive of Carmike, where such act or omission actually has a material and adverse effect on Carmike’ s business;

(3) (A) Executive breaches any of the provisions of § 4 and such breach has a material and adverse effect on Carmike or (B) Executive violates any provision of any code of conduct adopted by Carmike which applies to Executive and any other Carmike employee if the consequence to such violation for any employee subject to such code of conduct clearly would have been a termination of his or her employment by Carmike; provided, however,

(4) No such act or omission or event shall be treated as “Cause” under this Agreement unless (A) Executive has been provided a detailed, written statement of the basis for Carmike’ s belief such act or omission or event constitutes “Cause” and an opportunity to meet with the Board (together with Executive’ s counsel if Executive chooses to have Executive’ s counsel present at such meeting) after Executive has had a reasonable period in which to review such statement and, if the allegation is under § 2.1(b)(2) or § 2.1(b)(3), has had at least a thirty (30) day period to take corrective action and (B) the Board after such meeting (if Executive meets with the Board) and after the end of such thirty (30) day correction period (if applicable) determines reasonably and in good faith and by the affirmative vote of at least two thirds of the members of the Board then in office at a meeting called and held for such purpose that “Cause” does exist under this Agreement.

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2.2 Change in Control. The term “Change in Control” for purposes of this Agreement shall mean:

(a) a “change in control” of Carmike of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A for a proxy statement filed under Section 14(a) of the Exchange Act as in effect on the date of this Agreement;

(b) a “person” (as that term is used in Section 14(d)(2) of the Exchange Act) becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act) directly or indirectly of securities representing 45% or more of the combined voting power for election of directors of the then outstanding securities of Carmike;

(c) the individuals who at the beginning of any period of two consecutive years or less (starting on or after the date of this Agreement) constitute Carmike’s Board cease for any reason during such period to constitute at least a majority of Carmike’s Board, unless the election or nomination for election of each new member of the Board was approved in advance by vote of at least two-thirds of the members of such Board then still in office who were members of such Board at the beginning of such period;

(d) the shareholders of Carmike approve any reorganization, merger, consolidation or share exchange as a result of which the common stock of Carmike shall be changed, converted or exchanged into or for securities of another organization or any dissolution or liquidation of Carmike or any sale or the disposition of 50% or more of the assets or business of Carmike; or

(e) the shareholders of Carmike approve any reorganization, merger, consolidation or share exchange with another corporation unless (i) the persons who were the beneficial owners of the outstanding shares of the common stock of Carmike immediately before the consummation of such transaction beneficially own more than 60% of the outstanding shares of the common stock of the successor or survivor corporation in such transaction immediately following the consummation of such transaction and (ii) the number of shares of the common stock of such successor or

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survivor corporation beneficially owned by the persons described in § 2.2(e)(i) immediately following the consummation of such transaction is beneficially owned by each such person in substantially the same proportion that each such person had beneficially owned shares of Carmike common stock immediately before the consummation of such transaction, provided (iii) the percentage described in § 2.2(e)(i) of the beneficially owned shares of the successor or survivor corporation and the number described in § 2.2(e)(ii) of the beneficially owned shares of the successor or survivor corporation shall be determined exclusively by reference to the shares of the successor or survivor corporation which result from the beneficial ownership of shares of common stock of Carmike by the persons described in § 2.2(e)(i) immediately before the consummation of such transaction.

2.3 Code. The term “Code” for purposes of this Agreement shall mean the Internal Revenue Code of 1986, as amended.

2.4 Confidential or Proprietary Information. The term “Confidential or Proprietary Information” for purposes of this Agreement shall mean any secret, confidential, or proprietary data or other information relating to the business of Carmike (regardless of whether that data or information constitutes a trade secret) that is or has been disclosed to Executive or of which Executive became aware as a consequence of or through Executive’s relationship with Carmike and which has value to Carmike, and is not generally known to Carmike’s competitors, including but not limited to methods of operation, names of customers, price lists, financial information and projections, route books, personnel data, and similar information. Confidential or Proprietary Information shall not include any data or information that has been voluntarily disclosed to the public by Carmike (except where such public disclosure has been made by Executive without authorization) or that has been independently developed and disclosed by others, or that otherwise enters the public domain through lawful means.

2.5 Disability. The term “Disability” for purposes of this Agreement means that Executive is unable as a result of a mental or physical condition or illness to perform the essential functions of Executive’s job at Carmike even with reasonable accommodation for any consecutive 180-day period, all as reasonably determined by the Board.

2.6 Change Effective Date. The term “Change Effective Date” for purposes of this Agreement shall mean the earlier of (1) the date which includes the “closing” of the transaction which makes a Change in Control effective if the Change in Control is made effective through a transaction which has a “closing” or (2) the date a Change in Control is first reportable in accordance with applicable law as effective to the Securities and Exchange Commission if the Change in Control is made effective other than through a transaction which has a “closing”.

2.7 Exchange Act. The term “Exchange Act” for purposes of this Agreement shall mean the Securities Exchange Act of 1934, as amended.

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2.8 Good Reason. The term “Good Reason” for purposes of this Agreement shall mean:

(a) there is a reduction during Executive’ s Protection Period in Executive’ s base salary from Carmike or there is a reduction during Executive’ s Protection Period in Executive’ s combined opportunity to receive any incentive compensation and bonuses from Carmike without Executive’ s express written consent;

(b) there is a reduction during Executive’ s Protection Period in the scope, importance or prestige of Executive’ s duties, responsibilities or authority at Carmike (other than as a result of a mere change in Executive’ s title if such change in title is consistent with the organizational structure of Carmike following a Change in Control) without Executive’ s express written consent;

(c) Carmike at any time during Executive’ s Protection Period (without Executive’ s express written consent) transfers Executive’ s primary work site from Executive’ s primary work site at the beginning of his or her Protection Period to a new primary work site which is more than fifty (50) miles from Executive’ s then current primary work site; or

(d) Carmike fails (without Executive’ s express written consent) during Executive’ s Protection Period to continue to provide to Executive health and welfare benefits, deferred compensation benefits, executive perquisites and stock option and restricted stock grants that are in the aggregate comparable in value to those provided to Executive immediately prior to the beginning of his or her Protection Period; where

(e) Any determination required under this § 2.8 shall be made on a reasonable, good faith basis by Executive after giving the Chairman of the Board a thirty (30) day period to address and cure the basis for Executive’ s belief that he or she has “Good Reason” under this § 2.8.

(f) Notwithstanding anything contained herein, the non-renewal or expiration of the Term (or Carmike’ s providing notice of its intent not to renew) as provided in § 1 shall not constitute Good Reason.

2.9 Protection Period. The term “Protection Period” for purposes of this Agreement shall mean the period which begins on the date there is a Change in Control and ends on the earlier of (a) the second anniversary of the Change Effective Date for such Change in Control or (b) the later of (1) the date Carmike makes a formal, public announcement to Carmike’ s shareholders to the effect that the Change in Control will not become effective or (2) the date all action legally required to assure that there would be no Change Effective Date with respect to such Change in Control has been taken.

2.10 Restricted Period. The term “Restricted Period” for purposes of this Agreement shall mean the period of Executive’ s employment and the two (2) year period following the date Executive’ s employment by Carmike terminates.

2.11 Trade Secret. The term “Trade Secret” for purposes of this Agreement shall mean information protectable as a trade secret under applicable law, including, without limitation, and

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without regard to form: technical or non-technical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which is not commonly known by or available to the public and which information derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. For purposes of this Agreement, the term Trade Secret shall not include data or information that has been voluntarily disclosed to the public by Carmike (except where such public disclosure has been made by Executive without authorization) or that has been independently developed and disclosed by others, or that otherwise enters the public domain through lawful means.

### **§ 3. Termination and Severance**

#### **3.1 Separation Benefit.**

(a) If (i) Carmike at any time terminates Executive' s employment without Cause or (ii) Executive resigns during his Protection Period for Good Reason, then:

(b) Carmike shall pay Executive a total amount equal to (i) ( ) times his base salary in effect on the day before his or her employment terminates, plus (ii) in the event Carmike terminates Executive' s employment without Cause during the Protection Period or Executive resigns for Good Reason during the Protection Period, ( ) times his target annual bonus for the calendar year prior to the calendar year in which his termination of employment occurs. This severance benefit shall be payable in equal monthly installments (subject to applicable tax withholdings) over the ( ) consecutive calendar month period beginning with the calendar month that coincides with or next follows the sixty-day period beginning on the date Executive has a separation from service (within the meaning of § 409A of the Code).<sup>1</sup>

(c) Any restrictions on any outstanding shares of Carmike restricted stock granted to Executive before January 1, 2013 immediately shall (notwithstanding the terms under which such grant was made) expire and Executive' s right to such stock shall be non-forfeitable;

(d) For the period described in § 3.1(b), Executive shall continue to be eligible to purchase substantially the same health, dental and vision care coverage and life insurance coverage as Executive was provided under Carmike' s employee benefit plans, policies and practices on the day before Executive' s employment terminated; provided, however, Executive shall pay 100% of the cost of such coverage. Carmike shall reimburse Executive for the difference between the cost of the coverage to Executive and the premium that an active employee would pay for the same coverage ("Carmike' s cost of coverage") as soon as practical after Executive pays such cost. Further, if Carmike

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<sup>1</sup> For Messrs. Hare, Van Noy and Ellis, this benefit is two times base salary and target annual bonus, paid over 24 calendar months. For Mr. Lundin, this benefit is one times base salary and target annual bonus, paid over 12 calendar months.

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cannot make such coverage available to Executive under Carmike's employee benefit plans, policies or programs, either Carmike shall, at its election, (i) make such coverage and benefits available to Executive outside such plans, policies and programs (with Executive paying 100% of the cost of such coverage and any tax liability and Carmike reimbursing Executive an amount equal to Carmike's cost of coverage (as described above) as soon as practical after Executive pays such costs) or (ii) Carmike shall reimburse Executive for Executive's cost to purchase substantially similar coverage and benefits; provided, however in no event will Carmike be required to incur annual reimbursement costs in an amount exceeding 150% of Carmike's cost of coverage (as described above) for a similarly situated active employee during the one (1) year period preceding the date Executive's employment terminates. Executive at the end of the period described in § 3.1(b) shall have the right to elect healthcare continuation coverage under § 4980B of the Code and the corresponding provisions of the Employee Retirement Income Security Act of 1974, as amended, as if his employment had terminated at the end of such period.

3.2 Other Termination. Should Executive's employment terminate during the Term for any reason not governed by Section 3.1 above, or following the expiration of the Term, Executive shall be entitled only to compensation earned and all benefits and reimbursements due through the effective date of his termination; provided, however, that if Executive's employment terminates during the Term as a result of his death or Disability, (1) each outstanding and nonvested stock option granted to Executive by Carmike prior to May 1, 2013 shall (notwithstanding the terms under which such option was granted) become fully vested and exercisable on the date Executive's employment so terminates and each outstanding stock option shall (notwithstanding the terms under which such option was granted) remain exercisable for one year following such termination, or if less, for the remaining term of each such option (as determined as if there had been no such termination of Executive's employment), subject to the same terms and conditions as if Executive had remained employed by Carmike for such term or such period (other than any term or condition which gives Carmike the right to cancel any such option) and (2) any restrictions on any outstanding shares of Carmike restricted stock issued to Executive prior to May 1, 2013 immediately shall (notwithstanding the terms under which such grant was made) expire and Executive's right to such stock shall be non-forfeitable.

3.3 No Increase in Other Benefits. If Executive's employment terminates under the circumstances described in § 3.1, Executive expressly waives Executive's right, if any, to have any payment made under § 3.1 taken into account to increase the benefits otherwise payable to, or on behalf of, Executive under any employee benefit plan, policy or program, whether qualified or nonqualified, maintained by Carmike.

3.4 Termination in Anticipation of a Change in Control. Executive shall be treated under 3.1 as if Executive had resigned for Good Reason during Executive's Protection Period if:

- (1) Executive resigns for what would have been Good Reason if his or her resignation had been tendered during his or her Protection Period,
- (2) such resignation is effective at any time in the sixty (60) day period which ends on the date of a Change in Control, and
- (3) there is a Change Effective Date for such Change in Control.

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3.5 Asset Sales. If Carmike engages in a Change of Control under § 2.2(d) as a result of a sale or disposition of 50% or more of the assets or business of Carmike and the purchaser of such assets does not expressly agree to assume this Agreement and all of Carmike's obligations under this Agreement as part of the asset purchase agreement, Executive shall have the right to resign as of the Change Effective Date of such Change in Control and such resignation shall be treated as a resignation for Good Reason during his Protection Period.

3.6 General Release. The separation benefit provided in § 3.1 shall not be paid unless Executive signs a General Release of claims in a form reasonably acceptable to Carmike and such general release shall have become irrevocable on or before the end of the sixty (60) day period beginning on Executive's "separation from service" (as such term is defined in Treas. Reg. § 1.409A-1(h)) and subject to § 6.12, payments described in § 3.1 shall commence on the sixtieth (60th) day following Executive's separation from service. Notwithstanding the foregoing sentence, nothing in this §3.6 is intended to increase the amount of benefits provided under § 3.1.

#### **§ 4. Restrictive Covenants**

4.1 No Solicitation of Suppliers or Vendors. Executive will not, during the Restricted Period, for purposes of competing with Carmike in the business of operating movie theatres and related concessions, solicit or attempt to solicit, directly or by assisting others, any business or services from any other person or entity that directly or indirectly provides goods or services to Carmike, including the provision of movies, popcorn or other concession stand products, or the equipment to show movies and prepare popcorn and other concession stand products, and with whom Executive had material contact at any time during Executive's employment.

4.2 Non-Solicitation of Employees. Executive will not during the Restricted Period solicit or attempt to solicit on Executive's own behalf or on behalf of any other person, firm or corporation that engages, directly or indirectly, in exhibiting motion pictures, any person who was employed by Carmike in an executive, managerial, or supervisory capacity during the term of Executive's employment by Carmike, with whom Executive had business dealings during the two (2) year period which ends on the date Executive's employment by Carmike terminates (whether or not such employee would commit a breach of contract), and who has not ceased to be employed by Carmike for a period of at least one (1) year.

4.3 Trade Secrets and Confidential or Proprietary Information. Executive hereby agrees that Executive will hold in a fiduciary capacity for the benefit of Carmike, and will not directly or indirectly use or disclose, any Trade Secrets or Confidential or Proprietary Information (each as defined herein) that Executive may have acquired during the term of Executive's employment by Carmike. Executive's obligation of non-disclosure as set forth herein shall continue for so long as such item continues to constitute a Trade Secret or Confidential or Proprietary Information.

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4.4 Reasonable and Necessary Restrictions. Executive acknowledges that the restrictions, prohibitions and other provisions set forth in this Agreement, including without limitation the Restricted Period, are reasonable, fair and equitable in scope, terms and duration; are necessary to protect the legitimate business interests of Carmike; and are a material inducement to Carmike to enter into this Agreement. Executive covenants that Executive will not challenge the enforceability of this Agreement nor will Executive raise any equitable defense to its enforcement. In the event that any of the covenants in §§ 4.1, 4.2, and 4.3 are found by a court of competent jurisdiction or arbitrator to be overly broad or otherwise unenforceable as written, the parties request the court to modify or reform any such covenant to allow it to be enforced to the maximum extent permitted by law and to enforce the covenant as so modified or reformed.

4.5 Specific Performance. The provisions of § 4 shall survive the termination of this Agreement for any reason. Executive acknowledges that the obligations undertaken by him pursuant to this Agreement are unique and that Carmike likely will have no adequate remedy at law if Executive shall fail to perform any of Executive' s obligations under this Agreement, and Executive therefore confirms that Carmike' s right to specific performance of the terms of this Agreement is essential to protect the rights and interests of Carmike. Accordingly, in addition to any other remedies that Carmike may have at law or in equity, Carmike will have the right to have all obligations, covenants, agreements and other provisions of this Agreement specifically performed by Executive, and notwithstanding § 6.2(b), below, Carmike will have the right to obtain preliminary and permanent injunctive relief in court to secure specific performance and to prevent a breach or contemplated breach of this Agreement by Executive, and Executive submits to the jurisdiction of the courts of the State of Georgia for this purpose.

4.6 Tolling. In the event the enforceability of any of the restrictive covenants in this Agreement shall be challenged in a claim or counterclaim in court during the time periods set forth in this Agreement for such restrictive covenants, and Executive is not immediately enjoined from breaching any of the restrictive covenants herein, then if a court of competent jurisdiction later finds that the challenged protective covenant is enforceable, the time periods set forth in the challenged restrictive covenant(s) shall be deemed tolled upon the filing of the claim or counterclaim in court seeking or challenging the enforceability of this Agreement until the dispute is finally resolved and all periods of appeal have expired; provided, however, that, to the extent Executive complies with such restrictive covenant(s) during such challenge, the time periods set forth in the challenged restrictive covenant(s) shall not be deemed tolled.

4.7 Notification to Subsequent Employer. Executive agrees to notify any subsequent employer of the covenants and terms contained in this Section 4 of this Agreement and any related definitions. In addition, Executive authorizes Carmike to provide a copy of this Section 4 of this Agreement and any related definitions to third parties, including but not limited to, the Executive' s subsequent, anticipated or possible future employers.

## **§ 5. Work Product and Inventions.**

5.1 Works. Executive acknowledges that Executive' s work on and contributions to documents, programs, methodologies, protocols, and other expressions in any tangible medium which have been or will be prepared by Executive, or to which Executive has contributed or will



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contribute, in connection with Executive' s services to Carmike (collectively, "Works"), are and will be within the scope of Executive' s employment and part of Executive' s duties and responsibilities. Executive' s work on and contributions to the Works will be rendered and made by Executive for, at the instigation of, and under the overall direction of Carmike, and are and at all times shall be regarded, together with the Works, as "work made for hire" as that term is used in the United States Copyright Laws. However, to the extent that any court or agency should conclude that the Works (or any of them) do not constitute or qualify as a "work made for hire", Executive hereby assigns, grants, and delivers exclusively and throughout the world to Carmike all rights, titles, and interests in and to any such Works, and all copies and versions, including all copyrights and renewals. Executive agrees to cooperate with Carmike and to execute and deliver to Carmike, its successors and assigns, any assignments and documents Carmike requests for the purpose of establishing, evidencing, and enforcing or defending its complete, exclusive, perpetual, and worldwide ownership of all rights, titles, and interests of every kind and nature, including all copyrights, in and to the Works, and Executive constitutes and appoints Carmike as his agent to execute and deliver any assignments or documents Executive fails or refuses to execute and deliver, this power and agency being coupled with an interest and being irrevocable. Without limiting the preceding provisions of this § 5.1, Executive agrees that Carmike may edit and otherwise modify, and use, publish and otherwise exploit, the Works in all media and in such manner as Carmike, in its sole discretion, may determine.

5.2 Inventions and Ideas. Executive shall disclose promptly to Carmike (which shall receive it in confidence), and only to Carmike, any invention or idea of Executive in any way connected with Executive' s services or related to the business of Carmike, (developed alone or with others), conceived or made during the Term or within three (3) months thereafter and hereby assigns to Carmike any such invention or idea. Executive agrees to cooperate with Carmike and sign all papers deemed necessary by Carmike to enable it to obtain, maintain, protect and defend patents covering such inventions and ideas and to confirm Carmike' s exclusive ownership of all rights in such inventions, ideas and patents, and irrevocably appoints Carmike as its agent to execute and deliver any assignments or documents Executive fails or refuses to execute and deliver promptly, this power and agency being coupled with an interest and being irrevocable.

## **§ 6. Miscellaneous Provisions**

6.1 Assignment. This Agreement is for the personal services of Executive, and the rights and obligations of Executive under this Agreement are not assignable in whole or in part by Executive without the prior written consent of Carmike. This Agreement is assignable in whole or in part to any parent, subsidiaries, or affiliates of Carmike, but only if such person or entity is financially capable of fulfilling the obligations of Carmike under this Agreement.

### 6.2 Disputes.

(a) Governing Law and Courts. This Agreement will be governed by and construed under the laws of the State of Georgia (without reference to the choice of law principles under the laws of the State of Georgia). The parties agree that the state and federal courts in the State of Georgia with jurisdiction within or over Muscogee County, Georgia shall have exclusive jurisdiction and venue for any action arising from a dispute

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under this Agreement, and for any such action brought in such a court, expressly waives any defense Executive might otherwise have based on lack of personal jurisdiction or improper venue, or that the action has been brought in an inconvenient forum.

(b) Arbitration. Carmike shall have the right to obtain an injunction or other equitable relief in court arising out of Executive's breach of the provisions of § 4 of this Agreement. However, any other controversy or claim arising out of or relating to this Agreement or any alleged breach of this Agreement shall be settled by binding arbitration in Columbus, Georgia in accordance with the rules of the American Arbitration Association then applicable to employment-related disputes and any judgment upon any award, which may include an award of damages, may be entered in the highest state or federal court having jurisdiction over such award. In the event of the termination of Executive's employment, his or her sole remedy shall be arbitration under this § 6.2(b) and any award of damages shall be limited to recovery of lost compensation and benefits provided for in this Agreement. No punitive damages may be awarded to Executive. Carmike shall be responsible for paying all reasonable fees of the arbitrator.

6.3 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

6.4 Headings; References. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. Any reference to a section (§) shall be to a section (§) of this Agreement unless there is an express reference to a section (§) of the Code or the Exchange Act, in which event the reference shall be to the Code or to the Exchange Act, whichever is applicable.

6.5 Attorneys Fees. If at any time during the term of this Agreement or for a period of four (4) years after the expiration of this Agreement there should arise any dispute as to the validity, interpretation or application of any term or condition of this Agreement and it is finally determined by an arbitrator or a court of competent jurisdiction that Executive is the prevailing party in such dispute, and all appeals are exhausted and final, the Company agrees, upon written demand by Executive, to promptly reimburse Executive's reasonable costs and reasonable attorney's fees incurred by Executive in connection with reasonably seeking to enforce the terms of this Agreement up to \$100,000 in the aggregate for all such disputes. Any such reimbursement shall be made by the Company upon or as soon as practicable following receipt of supporting documentation of the expenses reasonably satisfactory to the Company (but in no event later than March 15th of the calendar year following the calendar year in which it is finally determined that Executive is the prevailing party in such dispute and all appeals are exhausted and final). The expenses paid by the Company during any taxable year of Executive will not affect the expenses paid by the Company in another taxable year. This right to reimbursement is not subject to liquidation or exchange for another benefit. With respect to any other action taken with respect to this Agreement, Carmike shall bear its own attorneys' fees and expenses and Executive shall bear Executive's own attorneys' fees and expenses.

6.6 Amendments and Waivers. Except as otherwise specified in this Agreement, this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of Carmike and Executive.

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6.7 Severability. Any provision of this Agreement held to be unenforceable under applicable law will be enforced to the maximum extent possible, and the balance of this Agreement will remain in full force and effect.

6.8 Entire Agreement. This Agreement constitutes the entire understanding and agreement of Carmike and Executive with respect to the transactions contemplated in this Agreement, and this Agreement supersedes all prior understandings and agreements between Carmike and Executive with respect to such transactions including the Prior Agreement. The provisions of Sections 4, 5 and 6 of this Agreement shall survive the termination thereof in accordance with their terms.

6.9 Return of Company Property. All records, designs, patents, business plans, financial statements, manuals, memoranda, customer lists, computer data, customer information, and other property or information delivered to or compiled by Executive by or on behalf of Carmike or its representatives, vendors or customers shall be and remain the property of Carmike, and be subject at all times to its discretion and control. Upon the request of Carmike and, in any event, upon the termination of Executive's employment with Carmike, Executive shall deliver all such materials to Carmike.

6.10 Notices. Any notice required under this Agreement to be given by either Carmike or Executive will be in writing and will be deemed effectively given upon personal delivery to the party to be notified or five (5) days after deposit with the United States post office by registered or certified mail, postage prepaid, to the other party at the address set forth below or to such other address as either party may from time to time designate by ten (10) days advance written notice pursuant to this § 6.10. Any such written notice shall be directed as follows:

If to Carmike:

Carmike Cinemas, Inc.  
1301 First Avenue  
Columbus, Georgia 31901  
Attention: General Counsel

If to Executive:

To Executive at his or her most recent  
address provided by Executive to Carmike

6.11 Binding Effect. This Agreement shall be for the benefit of, and shall be binding upon, Carmike and Executive and their respective heirs, personal representatives, legal representatives, successors and assigns, subject, however, to the provisions in § 6.1 of this Agreement.

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6.12 Compliance with § 409A of the Code. To the extent any payments under this Agreement constitute “deferred compensation” subject to § 409A of the Code, Executive and Carmike intend all such payments to comply with the requirements of such section, and this Agreement shall, to the extent practical, be operated and administered to effectuate such intent. Each payment made under §§ 3.1 and 6.5 of this Agreement is designated as a “separate payment” within the meaning of § 409A. Notwithstanding any contrary provision, (i) if at the time of “separation from service,” Executive is a “specified employee,” as determined in accordance with procedures adopted by the Company that reflect the requirements of § 409A(a)(2)(B)(i) of the Code (and any applicable guidance thereunder) and the deferral of the commencement of any payments or benefits otherwise payable hereunder as a result of such separation from service is necessary to comply with § 409A (after giving effect to all relevant exceptions including the exception for amounts qualifying as “short term deferrals”), then the Company shall defer the commencement of payment of any such payments or benefits hereunder (without any reduction in such payments or benefits ultimately paid or provided) and accumulate such amounts until the date that is six (6) months and one (1) day after the date Executive has a separation from service (or, if earlier, the date of the Employee’ s death) at which time the accumulated amounts shall be paid; and (ii) if any other payments of money or other benefits due to Employee hereunder could result in a violation of § 409A, such payments or other benefits shall be deferred if deferral will make such payment or other benefits compliant under § 409A, or otherwise such payment or other benefits shall be restructured, to the extent possible, in a manner, determined by the Company, that does not cause such a violation. In addition, to the extent that any reimbursement under this Agreement provides for a “deferral of compensation” within the meaning of § 409A of the Code, (i) the amount eligible for reimbursement in one calendar year may not affect the amount eligible for reimbursement or in-kind benefit in any other calendar year (except that a plan providing medical or health benefits may impose a generally applicable limit on the amount that may be reimbursed or paid), (ii) the right to reimbursement is not subject to liquidation or exchange for another benefit, and (iii) subject to any shorter time periods provided herein, any such reimbursement of an expense must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred.

6.13 Not an Employment Contract. This Agreement is not an employment contract and shall not give Executive the right to continue in employment by Carmike for any period of time or from time to time. Moreover, this Agreement shall not adversely affect the right of Carmike to terminate Executive’ s employment with or without cause at any time.

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**IN WITNESS WHEREOF**, Carmike and Executive have executed this Amended and Restated Separation Agreement effective as of the date first set forth above.

**CARMIKE CINEMAS, INC.**

By: \_\_\_\_\_

Name:

Title:

**EXECUTIVE**

\_\_\_\_\_  
Name:

**AMENDED AND RESTATED EMPLOYMENT AGREEMENT**

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "Agreement"), dated as of May 15, 2013, amends and restates that certain Employment Agreement (the "Prior Agreement") made and entered into as of the 4<sup>th</sup> day of June, 2009 (the "Commencement Date") by and between Carmike Cinemas, Inc. ("Carmike") and S. David Passman III ("Executive").

**R E C I T A L S**

**WHEREAS**, Carmike desires to continue to employ Executive and to have the benefit of his skills and services, and Executive desires to accept employment with Carmike, on the terms and conditions set forth herein; and

**WHEREAS**, Carmike and Executive desire to amend and restate the Prior Agreement in the form of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises, terms, covenants, and conditions set forth herein, and the performance of each, the parties hereto, intending to be legally bound, agree as follows:

**AGREEMENTS****§ 1. Term**

The term of this Agreement shall begin on the Commencement Date and shall end on June 4, 2012 (the "Initial Term"), unless extended or earlier terminated in accordance with the terms of this Agreement (the Initial Term and any extension or earlier termination thereof is referred to as the "Term"). If not earlier terminated, the Term automatically shall be extended for one additional year on the second anniversary of the Commencement Date and for one additional year on each anniversary of the Commencement Date thereafter unless Carmike, at least ninety (90) days before any such anniversary date, gives written notice to Executive that there will be no such extension. Should the Term expire, Executive shall be employed at-will.

**§ 2. Position and Duties**

Carmike hereby employs Executive as its President and Chief Executive Officer. Executive shall have such responsibilities, duties, and authority as assigned to him from time to time by Carmike's Board of Directors (the "Board"). Executive shall fulfill his duties and responsibilities in a reasonable and appropriate manner and in compliance with Carmike's policies and practices and the laws and regulations that apply to Carmike's operation and administration. During the Term, Executive shall devote his full business time and attention to the business and affairs of Carmike and shall not be engaged in, or employed by or provide services to, any other business enterprise without the written approval of the Board; provided, however, that nothing herein shall be construed as precluding Executive from devoting a reasonable amount of time to civic, charitable, or similar activities, so long as such activities do not interfere with the performance of Executive's duties hereunder.

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### § 3. Compensation

For all services rendered by Executive, Carmike shall compensate Executive as follows:

3.1 Base Salary. As of the Commencement Date, the gross annual salary payable to Executive shall be Six Hundred Thirty Thousand Dollars (\$630,000.00) per year payable on a regular basis in accordance with Carmike's standard payroll policies and procedures (the "Base Salary"). The Base Salary shall be reviewed and subject to adjustment by the Compensation and Nominating Committee of the Board (the "Committee") on an annual basis.

3.2 Perquisites, Benefits, and Other Compensation. Effective immediately on the Commencement Date, Executive shall be eligible for the same perquisites and benefits as are made available to other senior executive employees of Carmike (including, without limitation, mutually agreed upon club memberships in Columbus, Georgia, and participation in Carmike's deferred compensation plan), as well as such other perquisites or benefits as may be specified from time to time by the Board or the Committee. Carmike reserves the right at any time and from time to time to change, amend, or terminate any such perquisites and benefits as Carmike in its discretion deems appropriate or necessary under the circumstances.

3.3 Annual Bonus. Executive shall be eligible for an annual bonus each calendar year during the Term in an amount equal to 0%-150% of Base Salary, with a target annual bonus equal to 50% of Base Salary or such higher percentage as determined from time to time by the Committee ("Annual Bonus"). The Annual Bonus shall be determined by the Committee based upon Executive's achievement of performance goals established by the Committee (following consultation with Executive), and shall be at all times subject to the provisions of the Carmike Cinemas, Inc. Annual Executive Bonus Program (as amended from time to time) ("Bonus Program).

3.4 [Reserved]

3.5 [Reserved]

3.6 Vacation. Executive shall be eligible for four (4) weeks of vacation per year, subject to Carmike's vacation practices and procedures, as amended from time to time, pro-rated for 2009.

3.7 Withholdings. All compensation and benefits payable to Executive pursuant to this Agreement shall be subject to withholdings for taxes and other amounts required by law to be withheld.

### § 4. Expense Reimbursement

4.1 Reimbursement. Carmike shall reimburse Executive for (or, at Carmike's option, pay) all reasonable and proper business travel and other out-of-pocket expenses incurred by Executive in the performance of his duties and responsibilities to Carmike during the Term. All reimbursable expenses shall be appropriately documented in reasonable detail by Executive upon submission of any request for reimbursement, and in a format and manner consistent with Carmike's expense reporting and reimbursement policies. The following provisions shall apply

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to all taxable reimbursement of expenses, including the reimbursements (and compensation for income taxes or tax liability) described in Sections 4.2, 4.3 and 7.1(d), to the extent that such taxable reimbursement is a payment of deferred compensation from a “nonqualified deferred compensation plan” (as defined in Treas. Reg. § 1.409A-1(a)): All approved reimbursements for which appropriate invoices are presented shall be paid within a reasonable time and not later than the last day of the calendar year following the calendar year in which the reimbursed expense was incurred. Any expenses reimbursed during any calendar year will not affect the expenses reimbursed by Carmike in another calendar year. Executive’s right to reimbursement of expenses is not subject to liquidation or exchange for another benefit.

4.2 Automobile Allowance. Executive shall be entitled to reimbursement for automobile expenses, subject to Carmike’s normal automobile allowance policies and procedures for senior executives, as amended from time to time.

4.3 Apartment Allowance. Executive shall be entitled to reimbursement for reasonable expenses incurred to lease an apartment in Columbus, Georgia, up to, but not exceeding \$4,000 per calendar month. If any expense reimbursed pursuant to this § 4.3 is considered taxable income to Executive, Carmike shall compensate Executive for any income taxes owed by Executive related to such reimbursement, such that after such income taxes have been paid, the apartment expenses are fully reimbursed by Carmike.

## **§ 5. Place of Performance**

Executive shall carry out his duties and responsibilities principally in and from Carmike’s headquarters, which currently is in Columbus, Georgia. Executive acknowledges and agrees his position may involve business travel and/or work from temporary work site locations as necessary and appropriate.

## **§ 6. Definitions**

6.1 Cause. The term “Cause” for purposes of this Agreement:

(a) shall before the beginning or after the end of Executive’s Protection Period mean:

(1) Executive is convicted of, pleads guilty to, or confesses or otherwise admits to any felony or any act of fraud, misappropriation or embezzlement or Executive otherwise engages in a fraudulent act or course of conduct;

(2) There is any act or omission by Executive involving malfeasance or negligence in the performance of Executive’s duties and responsibilities for Carmike, or the exercise of Executive’s powers as an executive of Carmike, where such act or omission is reasonably likely to materially and adversely affect Carmike’s business;



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(3) (A) Executive breaches any of the provisions of § 8 or (B) Executive violates any provision of any code of conduct adopted by Carmike which applies to Executive and any other Carmike employee if the consequence to such violation for any employee subject to such code of conduct ordinarily would be a termination of his or her employment by Carmike; and

(4) any determination that “Cause” exists under this § 6.1(a) shall be made in good faith by the affirmative vote of at least a majority of the members of the Board then in office at a meeting called and held for purposes of making such determination.

(b) shall during Executive’ s Protection Period mean:

(1) Executive is convicted of, pleads guilty to, or confesses or otherwise admits to any felony or any act of fraud, misappropriation or embezzlement or Executive otherwise engages in a fraudulent act or course of conduct which has a material and adverse effect on Carmike;

(2) There is any act or omission by Executive involving malfeasance or gross negligence in the performance of Executive’ s duties and responsibilities for Carmike, or the exercise of Executive’ s powers as an executive of Carmike, where such act or omission actually has a material and adverse effect on Carmike’ s business;

(3) (A) Executive breaches any of the provisions of § 8 and such breach has a material and adverse effect on Carmike or (B) Executive violates any provision of any code of conduct adopted by Carmike which applies to Executive and any other Carmike employee if the consequence to such violation for any employee subject to such code of conduct clearly would have been a termination of his or her employment by Carmike; provided, however,

(4) No such act or omission or event shall be treated as “Cause” under this Agreement unless (A) Executive has been provided a detailed, written statement of the basis for Carmike’ s belief such act or omission or event constitutes “Cause” and an opportunity to meet with the Board (together with Executive’ s counsel if Executive chooses to have Executive’ s counsel present at such meeting) after Executive has had a reasonable period in which to review such statement and, if the allegation is under § 6.1(b)(2) or § 6.1(b)(3), has had at least a thirty (30) day period to take corrective action and (B) the Board after such meeting (if Executive meets with the Board) and after the end of such thirty (30) day correction period (if applicable) determines reasonably and in good faith and by the affirmative vote of at least two thirds of the members of the Board then in office at a meeting called and held for such purpose that “Cause” does exist under this Agreement.

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6.2 Change in Control. The term “Change in Control” for purposes of this Agreement shall mean:

(a) a “change in control” of Carmike of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A for a proxy statement filed under Section 14(a) of the Exchange Act as in effect on the date of this Agreement;

(b) a “person” (as that term is used in Section 14(d)(2) of the Exchange Act) becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act) directly or indirectly of securities representing 45% or more of the combined voting power for election of directors of the then outstanding securities of Carmike;

(c) the individuals who at the beginning of any period of two consecutive years or less (starting on or after the date of this Agreement) constitute Carmike’s Board cease for any reason during such period to constitute at least a majority of Carmike’s Board, unless the election or nomination for election of each new member of the Board was approved in advance by vote of at least two-thirds of the members of such Board then still in office who were members of such Board at the beginning of such period;

(d) the shareholders of Carmike approve any reorganization, merger, consolidation or share exchange as a result of which the common stock of Carmike shall be changed, converted or exchanged into or for securities of another organization or any dissolution or liquidation of Carmike or any sale or the disposition of 50% or more of the assets or business of Carmike; or

(e) the shareholders of Carmike approve any reorganization, merger, consolidation or share exchange with another corporation unless (i) the persons who were the beneficial owners of the outstanding shares of the common stock of Carmike immediately before the consummation of such transaction beneficially own more than 60% of the outstanding shares of the common stock of the successor or survivor corporation in such transaction immediately following the consummation of such transaction and (ii) the number of shares of the common stock of such successor or survivor corporation beneficially owned by the persons described in § 6.2(e)(i) immediately following the consummation of such transaction is beneficially owned by each such person in substantially the same proportion that each such person had beneficially owned shares of Carmike common stock immediately before the consummation of such transaction, provided (iii) the percentage described in § 6.2(e)(i) of the beneficially owned shares of the successor or survivor corporation and the number described in § 6.2 (e)(ii) of the beneficially owned shares of the successor or survivor corporation shall be determined exclusively by reference to the shares of the successor or survivor corporation which result from the beneficial ownership of shares of common stock of Carmike by the persons described in § 6.2(e)(i) immediately before the consummation of such transaction.

6.3 Code. The term “Code” for purposes of this Agreement shall mean the Internal Revenue Code of 1986, as amended.

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6.4 Confidential or Proprietary Information. The term “Confidential or Proprietary Information” for purposes of this Agreement shall mean any secret, confidential, or proprietary data or other information relating to the business of Carmike (regardless of whether that data or information constitutes a trade secret) that is or has been disclosed to Executive or of which Executive became aware as a consequence of or through Executive’s relationship with Carmike and which has value to Carmike, and is not generally known to Carmike’s competitors, including but not limited to methods of operation, names of customers, price lists, financial information and projections, route books, personnel data, and similar information. Confidential or Proprietary Information shall not include any data or information that has been voluntarily disclosed to the public by Carmike (except where such public disclosure has been made by Executive without authorization) or that has been independently developed and disclosed by others, or that otherwise enters the public domain through lawful means.

6.5 Disability. The term “Disability” for purposes of this Agreement means that Executive is unable as a result of a mental or physical condition or illness to perform the essential functions of Executive’s job at Carmike even with reasonable accommodation for any consecutive 180-day period, all as reasonably determined by the Board.

6.6 Change Effective Date. The term “Change Effective Date” for purposes of this Agreement shall mean the earlier of (1) the date which includes the “closing” of the transaction which makes a Change in Control effective if the Change in Control is made effective through a transaction which has a “closing” or (2) the date a Change in Control is first reportable in accordance with applicable law as effective to the Securities and Exchange Commission if the Change in Control is made effective other than through a transaction which has a “closing”.

6.7 Exchange Act. The term “Exchange Act” for purposes of this Agreement shall mean the Securities Exchange Act of 1934, as amended.

6.8 Good Reason. The term “Good Reason” for purposes of this Agreement shall mean:

(a) there is a reduction during Executive’s Protection Period in Executive’s base salary from Carmike or there is a reduction during Executive’s Protection Period in Executive’s combined opportunity to receive any incentive compensation and bonuses from Carmike without Executive’s express written consent;

(b) there is a reduction during Executive’s Protection Period in the scope, importance or prestige of Executive’s duties, responsibilities or authority at Carmike (other than as a result of a mere change in Executive’s title if such change in title is consistent with the organizational structure of Carmike following a Change in Control) without Executive’s express written consent;

(c) Carmike at any time during Executive’s Protection Period (without Executive’s express written consent) transfers Executive’s primary work site from Executive’s primary work site at the beginning of his or her Protection Period to a new primary work site which is more than fifty (50) miles from Executive’s then current primary work site; or

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(d) Carmike fails (without Executive' s express written consent) during Executive' s Protection Period to continue to provide to Executive health and welfare benefits, deferred compensation benefits, executive perquisites and stock option and restricted stock grants that are in the aggregate comparable in value to those provided to Executive immediately prior to the beginning of his or her Protection Period; where

(e) Any determination required under this § 6.8 shall be made on a reasonable, good faith basis by Executive after giving the Chairman of the Board a reasonable opportunity to address and cure the basis for Executive' s belief that he or she has "Good Reason" under this § 6.8.

(f) Notwithstanding anything contained herein, the non-renewal or expiration of the Term (or Carmike' s providing notice of its intent not to renew) as provided in § 1 shall not constitute Good Reason.

6.9 Protection Period. The term "Protection Period" for purposes of this Agreement shall mean the period which begins on the date there is a Change in Control and ends on the earlier of (a) the second anniversary of the Change Effective Date for such Change in Control or (b) the later of (1) the date Carmike makes a formal, public announcement to Carmike' s shareholders to the effect that the Change in Control will not become effective or (2) the date all action legally required to assure that there would be no Change Effective Date with respect to such Change in Control has been taken.

6.10 Restricted Period. The term "Restricted Period" for purposes of this Agreement shall mean the period which starts on the date Executive' s employment by Carmike terminates under circumstances which create an obligation for Carmike under § 7.1 of this Agreement and which ends (a) on the second anniversary of such termination date or (b) on the first date following such a termination on which Carmike breaches any obligation to Executive under § 7.1 of this Agreement, whichever period is shorter.

6.11 Trade Secret. The term "Trade Secret" for purposes of this Agreement shall mean information protectable as a trade secret under applicable law, including, without limitation, and without regard to form: technical or non-technical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which is not commonly known by or available to the public and which information derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. For purposes of this Agreement, the term Trade Secret shall not include data or information that has been voluntarily disclosed to the public by Carmike (except where such public disclosure has been made by Executive without authorization) or that has been independently developed and disclosed by others, or that otherwise enters the public domain through lawful means.

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## § 7. Termination and Severance

### 7.1 Separation Benefit.

(a) If Carmike at any time terminates Executive's employment without Cause or if Executive resigns during his Protection Period for Good Reason, then:

(b) Carmike shall pay Executive a total amount equal to (i) 2 times his Base Salary (at a rate equal to the highest level of Base Salary Executive was paid in the year prior to his termination of employment), plus (ii) 2 times his target Annual Bonus for the calendar year prior to the calendar year in which his termination of employment occurs. This severance benefit shall be payable in equal monthly installments (subject to applicable tax withholdings) over the twenty-four (24) consecutive month period which starts on the date Executive has a separation from service (within the meaning of § 409A of the Code), subject to Section 7.1(e) below;

(c) Any restrictions on any outstanding restricted stock granted to Executive by Carmike before January 1, 2013 immediately shall (notwithstanding the terms under which such grant was made) expire and Executive's right to such stock shall be non-forfeitable;

(d) For the period described in § 7.1(b), Executive shall continue to be eligible to purchase substantially the same health, dental and vision care coverage and life insurance coverage as Executive was provided under Carmike's employee benefit plans, policies and practices on the day before Executive's employment terminated; provided, however, Executive shall pay 100% of the cost of such coverage. Carmike shall reimburse Executive for the difference between the cost of the coverage to Executive and the premium that an active employee would pay for the same coverage ("Carmike's cost of coverage") as soon as practical after Executive pays such cost. Further, if Carmike cannot make such coverage available to Executive under Carmike's employee benefit plans, policies or programs, either Carmike shall, at its election, (i) make such coverage and benefits available to Executive outside such plans, policies and programs (with Executive paying 100% of the cost of such coverage and any tax liability and Carmike reimbursing Executive an amount equal to Carmike's cost of coverage (as described above) as soon as practical after Executive pays such costs) or (ii) Carmike shall reimburse Executive for Executive's cost to purchase substantially similar coverage and benefits; provided, however in no event will Carmike be required to incur annual reimbursement costs in an amount exceeding 150% of Carmike's cost of coverage (as described above) for a similarly situated active employee during the one (1) year period preceding the date Executive's employment terminates. Executive at the end of the period described in § 7.1(b) shall have the right to elect healthcare continuation coverage under § 4980B of the Code and the corresponding provisions of the Employee Retirement Income Security Act of 1974, as amended, as if his employment had terminated at the end of such period;

(e) If Executive is a "specified employee" (as defined in Treas. Reg. § 1.409A-1(i)), then each payment to which Executive is entitled under § 7.1 that is a payment of deferred compensation from a "nonqualified deferred compensation plan" (as defined in Treas. Reg. § 1.409A-1(a)) shall be delayed until the date which is six (6) months and one (1) day after the date Executive has a "separation from service" (as defined in Treas. Reg. § 1.409A-1(h)).

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7.2 Other Termination. Should Executive's employment terminate during the Term for any reason not governed by Section 7.1 above, or following the expiration of the Term, Executive shall be entitled only to compensation earned and all benefits and reimbursements due under this Agreement through the effective date of his termination; provided, however, that if Executive's employment terminates during the Term as a result of his death or Disability, (1) each outstanding and nonvested stock option granted to Executive by Carmike prior to May 1, 2013 shall (notwithstanding the terms under which such option was granted) become fully vested and exercisable on the date Executive's employment so terminates and each such outstanding stock option shall (notwithstanding the terms under which such option was granted) remain exercisable for one year following such termination, or if less, for the remaining term of each such option (as determined as if there had been no such termination of Executive's employment), subject to the same terms and conditions as if Executive had remained employed by Carmike for such term or such period (other than any term or condition which gives Carmike the right to cancel any such option) and (2) any restrictions on any outstanding restricted stock grants to Executive by Carmike prior to May 1, 2013<sup>2</sup> immediately shall (notwithstanding the terms under which such grant was made) expire and Executive's right to such stock shall be non-forfeitable.

7.3 No Increase in Other Benefits. If Executive's employment terminates under the circumstances described in § 7.1, Executive expressly waives Executive's right, if any, to have any payment made under § 7.1 taken into account to increase the benefits otherwise payable to, or on behalf of, Executive under any employee benefit plan, policy or program, whether qualified or nonqualified, maintained by Carmike.

7.4 Termination in Anticipation of a Change in Control. Executive shall be treated under 7.1 as if Executive had resigned for Good Reason during Executive's Protection Period if:

- (1) Executive resigns for what would have been Good Reason if his or her resignation had been tendered during his or her Protection Period,
- (2) such resignation is effective at any time in the sixty (60) day period which ends on the date of a Change in Control, and
- (3) there is a Change Effective Date for such Change in Control.

7.5 Asset Sales. If Carmike engages in a Change of Control under § 6.2(d) as a result of a sale or disposition of 50% or more of the assets or business of Carmike and the purchaser of such assets does not expressly agree to assume this Agreement and all of Carmike's obligations under this Agreement as part of the asset purchase agreement, Executive shall have the right to resign as of the Change Effective Date of such Change in Control and such resignation shall be treated as a resignation for Good Reason during his Protection Period.

7.6 General Release. The separation benefit provided in § 7.1 shall not be paid unless Executive signs a General Release of claims in a form reasonably acceptable to Carmike and such general release shall have become irrevocable on or before the end of the sixty (60) day period beginning on Executive's "separation from service" (as such term is defined in Treas. Reg. § 1.409A-1(h)) and subject to § 7.1(e), payments described in § 7.1 shall commence on the sixtieth (60th) day following Executive's separation from service. Notwithstanding the foregoing sentence, nothing in this § 7.6 is intended to increase the amount of benefits provided under § 7.1.

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## § 8. Restrictive Covenants

8.1 No Solicitation of Suppliers or Vendors. Executive will not, during the Restricted Period, for purposes of competing with Carmike in the business of operating movie theatres and related concessions, solicit or seek to solicit on Executive' s own behalf or on behalf of any other person or entity, any other person or entity that directly or indirectly provides goods or services to Carmike, including the provision of movies, popcorn or other concession stand products, or the equipment to show movies and prepare popcorn and other concession stand products, and with whom Executive had a personal business interaction, at any time during the two (2) years immediately prior to the termination of Executive' s employment by Carmike.

8.2 Non-Solicitation of Employees. Executive will not during the Restricted Period solicit or attempt to solicit on Executive' s own behalf or on behalf of any other person, firm or corporation that engages, directly or indirectly, in exhibiting motion pictures, any person who was employed by Carmike in an executive, managerial, or supervisory capacity during the term of Executive' s employment by Carmike, with whom Executive had business dealings during the two (2) year period which ends on the date Executive' s employment by Carmike terminates (whether or not such employee would commit a breach of contract), and who has not ceased to be employed by Carmike for a period of at least one (1) year.

8.3 Trade Secrets and Confidential or Proprietary Information. Executive hereby agrees that Executive will hold in a fiduciary capacity for the benefit of Carmike, and will not directly or indirectly use or disclose, any Trade Secrets or Confidential or Proprietary Information (each as defined below) that Executive may have acquired during the term of Executive' s employment by Carmike. Executive' s obligation of non-disclosure as set forth herein shall continue for so long as such item continues to constitute a Trade Secret or Confidential or Proprietary Information.

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8.4 Reasonable and Necessary Restrictions. Executive acknowledges that the restrictions, prohibitions and other provisions set forth in this Agreement, including without limitation the Restricted Period, are reasonable, fair and equitable in scope, terms and duration; are necessary to protect the legitimate business interests of Carmike; and are a material inducement to Carmike to enter into this Agreement. Executive covenants that Executive will not challenge the enforceability of this Agreement nor will Executive raise any equitable defense to its enforcement.

8.5 Specific Performance. The provisions of § 8 shall survive the termination of this Agreement for any reason. Executive acknowledges that the obligations undertaken by him pursuant to this Agreement are unique and that Carmike likely will have no adequate remedy at law if Executive shall fail to perform any of Executive' s obligations under this Agreement, and Executive therefore confirms that Carmike' s right to specific performance of the terms of this Agreement is essential to protect the rights and interests of Carmike. Accordingly, in addition to any other remedies that Carmike may have at law or in equity, Carmike will have the right to have all obligations, covenants, agreements and other provisions of this Agreement specifically performed by Executive, and notwithstanding § 10.2(b), below, Carmike will have the right to obtain preliminary and permanent injunctive relief in court to secure specific performance and to prevent a breach or contemplated breach of this Agreement by Executive, and Executive submits to the jurisdiction of the courts of the State of Georgia for this purpose.

8.6 Tolling. In the event the enforceability of any of the restrictive covenants in this Agreement shall be challenged in a claim or counterclaim in court during the time periods set forth in this Agreement for such restrictive covenants, and Executive is not immediately enjoined from breaching any of the restrictive covenants herein, then if a court of competent jurisdiction later finds that the challenged protective covenant is enforceable, the time periods set forth in the challenged restrictive covenant(s) shall be deemed tolled upon the filing of the claim or counterclaim in court seeking or challenging the enforceability of this Agreement until the dispute is finally resolved and all periods of appeal have expired; provided, however, that, to the extent Executive complies with such restrictive covenant(s) during such challenge, the time periods set forth in the challenged restrictive covenant(s) shall not be deemed tolled.

8.7 Notification to Subsequent Employer. Executive agrees to notify any subsequent employer of the covenants and terms contained in this Section 8 of this Agreement and any related definitions. In addition, Executive authorizes Carmike to provide a copy of this Section 8 of this Agreement and any related definitions to third parties, including but not limited to, the Executive' s subsequent, anticipated or possible future employers.

## **§ 9. Work Product and Inventions.**

9.1 Works. Executive acknowledges that Executive' s work on and contributions to documents, programs, methodologies, protocols, and other expressions in any tangible medium which have been or will be prepared by Executive, or to which Executive has contributed or will contribute, in connection with Executive' s services to Carmike (collectively, "Works"), are and will be within the scope of Executive' s employment and part of Executive' s duties and responsibilities. Executive' s work on and contributions to the Works will be rendered and made



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by Executive for, at the instigation of, and under the overall direction of Carmike, and are and at all times shall be regarded, together with the Works, as “work made for hire” as that term is used in the United States Copyright Laws. However, to the extent that any court or agency should conclude that the Works (or any of them) do not constitute or qualify as a “work made for hire”, Executive hereby assigns, grants, and delivers exclusively and throughout the world to Carmike all rights, titles, and interests in and to any such Works, and all copies and versions, including all copyrights and renewals. Executive agrees to cooperate with Carmike and to execute and deliver to Carmike, its successors and assigns, any assignments and documents Carmike requests for the purpose of establishing, evidencing, and enforcing or defending its complete, exclusive, perpetual, and worldwide ownership of all rights, titles, and interests of every kind and nature, including all copyrights, in and to the Works, and Executive constitutes and appoints Carmike as his agent to execute and deliver any assignments or documents Executive fails or refuses to execute and deliver, this power and agency being coupled with an interest and being irrevocable. Without limiting the preceding provisions of this § 9.1, Executive agrees that Carmike may edit and otherwise modify, and use, publish and otherwise exploit, the Works in all media and in such manner as Carmike, in its sole discretion, may determine.

9.2 Inventions and Ideas. Executive shall disclose promptly to Carmike (which shall receive it in confidence), and only to Carmike, any invention or idea of Executive in any way connected with Executive’s services or related to the business of Carmike, (developed alone or with others), conceived or made during the Term or within three (3) months thereafter and hereby assigns to Carmike any such invention or idea. Executive agrees to cooperate with Carmike and sign all papers deemed necessary by Carmike to enable it to obtain, maintain, protect and defend patents covering such inventions and ideas and to confirm Carmike’s exclusive ownership of all rights in such inventions, ideas and patents, and irrevocably appoints Carmike as its agent to execute and deliver any assignments or documents Executive fails or refuses to execute and deliver promptly, this power and agency being coupled with an interest and being irrevocable.

## **§ 10. Miscellaneous Provisions**

10.1 Assignment. This Agreement is for the personal services of Executive, and the rights and obligations of Executive under this Agreement are not assignable in whole or in part by Executive without the prior written consent of Carmike. This Agreement is assignable in whole or in part to any parent, subsidiaries, or affiliates of Carmike, but only if such person or entity is financially capable of fulfilling the obligations of Carmike under this Agreement.

### 10.2 Disputes.

(a) Governing Law and Courts. This Agreement will be governed by and construed under the laws of the State of Georgia (without reference to the choice of law principles under the laws of the State of Georgia). Executive consents to jurisdiction and venue in the state and federal courts in the State of Georgia for any action arising from a dispute under this Agreement, and for any such action brought in such a court, expressly waives any defense Executive might otherwise have based on lack of personal jurisdiction or improper venue, or that the action has been brought in an inconvenient forum.

(b) Arbitration. Carmike shall have the right to obtain an injunction or other equitable relief in court arising out of Executive’s breach of the provisions of § 8 of this Agreement. However, any other controversy or claim arising out of or relating to this Agreement or any alleged breach of this Agreement shall be settled by binding arbitration in Columbus, Georgia in accordance with the rules of the American Arbitration Association then applicable to employment-related disputes and any judgment upon any award, which may include an award of damages, may be entered in the highest state or federal court having jurisdiction over such award. In the event of the termination of Executive’s employment, his or her sole remedy shall be arbitration under this § 10.2(b) and any award of damages shall be limited to recovery of lost compensation and benefits provided for in this Agreement. No punitive damages may be awarded to Executive. Carmike shall be responsible for paying all reasonable fees of the arbitrator.

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10.3 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

10.4 Headings; References. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. Any reference to a section (§) shall be to a section (§) of this Agreement unless there is an express reference to a section (§) of the Code or the Exchange Act, in which event the reference shall be to the Code or to the Exchange Act, whichever is applicable.

10.5 Attorneys Fees. If any action at law or in equity is necessary for Executive to enforce or interpret the terms of this Agreement with respect to claims related to his Protection Period, Carmike shall pay Executive's reasonable attorneys' fees and other reasonable expenses incurred with respect to such action, and such fees and expenses shall be paid on the date which is six (6) months and one (1) day after the date Executive has a "separation from service" (as "separation from service" is defined in Treas. Regs. § 1.409A-1(h)). To the extent that attorneys' fees or expenses are incurred with respect to claims related to Executive's Protection Period after such payment date, Carmike shall pay such additional fees and expenses on the first business day of each month following the date which is six (6) months and one (1) day after the date Executive has a separation from service. However, no payments shall be made after the third anniversary of the date the last applicable statute of limitations has run, and no payments shall be made for any expenses for a calendar year if Carmike cannot reasonably reimburse such expenses before December 31 of the following calendar year. If any other action is taken with respect to this Agreement, Carmike shall bear its own attorneys' fees and expenses and Executive shall bear Executive's own attorneys' fees and expenses.

10.6 Amendments and Waivers. Except as otherwise specified in this Agreement, this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of Carmike and Executive.

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10.7 Severability. Any provision of this Agreement held to be unenforceable under applicable law will be enforced to the maximum extent possible, and the balance of this Agreement will remain in full force and effect.

10.8 Entire Agreement. This Agreement constitutes the entire understanding and agreement of Carmike and Executive with respect to the transactions contemplated in this Agreement, and this Agreement supersedes all prior understandings and agreements between Carmike and Executive with respect to such transactions including the Prior Agreement. The provisions of Sections 8, 9 and 10 of this Agreement shall survive the termination thereof in accordance with their terms.

10.9 Return of Company Property. All records, designs, patents, business plans, financial statements, manuals, memoranda, customer lists, computer data, customer information, and other property or information delivered to or compiled by Executive by or on behalf of Carmike or its representatives, vendors or customers shall be and remain the property of Carmike, and be subject at all times to its discretion and control. Upon the request of Carmike and, in any event, upon the termination of Executive's employment with Carmike, Executive shall deliver all such materials to Carmike.

10.10 Notices. Any notice required under this Agreement to be given by either Carmike or Executive will be in writing and will be deemed effectively given upon personal delivery to the party to be notified or five (5) days after deposit with the United States post office by registered or certified mail, postage prepaid, to the other party at the address set forth below or to such other address as either party may from time to time designate by ten (10) days advance written notice pursuant to this § 10.10. Any such written notice shall be directed as follows:

If to Carmike:

Carmike Cinemas, Inc.  
1301 First Avenue  
Columbus, Georgia 31901  
Attention: General Counsel

If to Executive:

To Executive at his or her most recent  
address provided by Executive to Carmike

10.11 Binding Effect. This Agreement shall be for the benefit of, and shall be binding upon, Carmike and Executive and their respective heirs, personal representatives, legal representatives, successors and assigns, subject, however, to the provisions in § 10.1 of this Agreement.

10.12 Compliance with § 409A of the Code. To the extent this Agreement is subject to § 409A of the Code, the Executive and Carmike intend all payments under this Agreement to comply with the requirements of such section, and this Agreement shall, to the extent practical,

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be operated and administered to effectuate such intent. To the extent necessary to avoid adverse tax consequences under § 409A of the Code, the timing of any payment under this Agreement shall be delayed by six months and one day in a manner consistent with § 409A(a)(2)(B)(i) of the Code.”

**IN WITNESS WHEREOF**, Carmike and Executive have executed this Amended and Restated Employment Agreement effective as of the date first set forth above.

**CARMIKE CINEMAS, INC.**

By: /s/ Daniel E. Ellis  
Name: Daniel E. Ellis  
Title: Senior Vice President, General Counsel &  
Secretary

**EXECUTIVE**

/s/ S. David Passman III  
S. David Passman III

**AMENDMENT NUMBER ONE TO SEPARATION AGREEMENT**

This Amendment Number One to Separation Agreement (this “Amendment”) is made and entered into as of May 15, 2013 by and between Carmike Cinemas, Inc. (“Carmike”) and John Lundin (“Executive”).

WHEREAS, Carmike and Executive entered into a Separation Agreement effective as of January 25, 2010 (the “Separation Agreement”) to address certain benefits payable to Executive upon termination of employment;

WHEREAS, Carmike and Executive desire to amend the Separation Agreement to clarify certain provisions for purposes of Section 409A of the Internal Revenue Code of 1986, as amended;

NOW, THEREFORE, in consideration of the mutual promises, terms, covenants, and conditions set forth herein, Carmike and Executive hereby amend the Separation Agreement as follows, effective as of January 25, 2010:

1.

By amending Section 2.1(e) to read as follows:

“If Executive is a “specified employee” (as defined in Treas. Reg. § 1.409A-1(i)), then the timing of payments to which Executive is entitled shall be determined in accordance with § 4.13.”

2.

By amending Section 4.13, Compliance with § 409A of the Code, to read as follows:

“Compliance with § 409A of the Code. To the extent this Agreement is subject to § 409A of the Code, the Executive and Carmike intend all payments under this Agreement to comply with the requirements of such section, and this Agreement shall, to the extent practical, be operated and administered to effectuate such intent. If Executive is a “specified employee” (as defined in Treas. Reg. § 1.409A-1(i)), then each payment to which Executive is entitled under § 2.1 that is a payment of deferred compensation from a “nonqualified deferred compensation plan” (as defined in Treas. Reg. § 1.409A-1(a)) shall be delayed until the date which is six (6) months and one (1) day after the date Executive has a “separation from service” (as defined in Treas. Reg. § 1.409A-1(h)). To the extent that any taxable reimbursement of expenses, including the reimbursements (and compensation for income taxes or tax liability) described in § 2.1(d), is a payment of deferred compensation from a “nonqualified deferred compensation plan” (as defined in Treas. Reg. § 1.409A-1(a)): (i) all approved reimbursements shall be paid within a reasonable time and not later than the last day of the calendar year following the calendar year in which the reimbursed expense was incurred, (ii)

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any expenses reimbursed during any calendar year shall not affect the expenses reimbursed by Carmike in another calendar year, and (iii) Executive' s right to reimbursement of expenses shall not be subject to liquidation or exchange for another benefit.”

3.

Except as otherwise expressly amended herein, the terms and conditions of the Separation Agreement as in effect immediately before the effective date of this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, Carmike and Executive have executed this Amendment Number One as of the date first set forth above.

**CARMIKE CINEMAS, INC.**

By: /s/ Daniel E. Ellis

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Daniel E. Ellis

Senior Vice President, General Counsel and  
Secretary

**EXECUTIVE**

/s/ John Lundin

\_\_\_\_\_

John Lundin

The following executive officers have entered into this Amendment Number One to Performance Share Certificates Granted in 2012 and 2013, a form of which follows, with Carmike Cinemas, Inc.:

Name

S. David Passman III  
Richard B. Hare  
Fred W. Van Noy  
Daniel E. Ellis  
John Lundin

**AMENDMENT NUMBER ONE TO PERFORMANCE SHARE CERTIFICATES GRANTED IN 2012 AND 2013**

This Amendment Number One to the Performance Share Certificates by which Carmike Cinemas, Inc. (“Carmike”) agreed to make Stock Grants to (“Eligible Employee”) effective as of March 15, 2012 (the “2012 Grant”) and February 28, 2013 (the “2013 Grant”) is made and entered into as of May 15, 2013 by and between Carmike and Eligible Employee.

**WHEREAS**, Carmike and Eligible Employee desire to amend the terms and conditions under which Carmike will make Stock Grants to Eligible Employee under the 2012 Grant and the 2013 Grant;

**NOW, THEREFORE**, the 2012 Grant and the 2013 Grant each are hereby amended as follows, notwithstanding any provisions therein to the contrary, effective as of May 15, 2013.

1. By deleting the last sentence of § 2 and replacing it with:

In the event that, prior to the Vesting Date, (i) Eligible Employee has a Separation from Service as a result of death or Disability or (ii) Eligible Employee has a Retirement, the Committee may exercise its discretion to reduce the number of Target Shares earned for each Performance Period completed prior to Eligible Employee’ s Separation from Service or Retirement, as applicable, to the target level for that period based on total shareholder return.

2. By amending § 3 to read as follows:

**§ 3. Vesting and Timing of Stock Grant.**

- (a) Normal Vesting. If Eligible Employee remains continuously employed by Carmike through the Vesting Date, Eligible Employee will become fully vested on the Vesting Date.

Any opportunity to earn or interest in Target Shares for any Performance Period that begins after Eligible Employee’ s Separation from Service will be forfeited upon Eligible Employee’ s Separation from Service.

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If Eligible Employee vests under this § 3(a), the Committee will make a Stock Grant to Eligible Employee for the number of shares of Stock earned by Eligible Employee pursuant to § 2 within 45 days after the Vesting Date.

- (b) Death or Disability Vesting. If Eligible Employee has a Separation from Service as a result of death or Disability prior to the Vesting Date, Eligible Employee will become fully vested with respect to (i) the actual number of shares of Stock earned by Eligible Employee for each Performance Period completed prior to Eligible Employee's Separation from Service, as determined by the Committee pursuant to § 2, and (ii) a pro rata portion of the number of Target Shares for the Performance Period during which Eligible Employee has a Separation from Service as a result of death or Disability equal to the product of (A) the number of Target Shares for such Performance Period and (B) a fraction, the numerator of which is the number of days in the Performance Period preceding Eligible Employee's Separation from Service and the denominator of which is 365.

If Eligible Employee vests under this § 3(b), then subject to the delay described in § 3(f), the Committee will make a Stock Grant to Eligible Employee (or in the case of death, to Eligible Employee's estate) equal to the number of shares of Stock described in this § 3(b) within 45 days after Eligible Employee's Separation from Service as a result of death or Disability.

- (c) Retirement Vesting. If Eligible Employee has a Retirement prior to the Vesting Date, Eligible Employee will become fully vested with respect to (i) the actual number of shares of Stock earned by Eligible Employee for each Performance Period completed prior to Eligible Employee's Retirement, as determined by the Committee pursuant to § 2, and (ii) a pro rata portion of the number of shares of Stock actually earned by Eligible Employee for the Performance Period during which Eligible Employee has a Retirement equal to the product of (A) the number of shares of Stock actually earned by Eligible Employee for such Performance Period, as determined by the Committee pursuant to § 2 after the end of such Performance Period, and (B) a fraction, the numerator of which is the number of days in the Performance Period preceding Eligible Employee's Retirement and the denominator of which is 365.

Any opportunity to earn or interest in Target Shares for any Performance Period that begins after Eligible Employee's Retirement will be forfeited



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If Eligible Employee vests under this § 3(c), then subject to the delay described in § 3(f), the Committee will make a Stock Grant to Eligible Employee for the number of shares of Stock described in (i) of the first sentence of this § 3(c) within 30 days after Eligible Employee's Retirement and for the number of shares of Stock described in (ii) of the first sentence of this § 3(c) within 45 days after March 1 immediately following the end of the Performance Period during which Eligible Employee's Retirement occurs.

- (d) Change in Control Vesting. In the event of a Change in Control prior to the Vesting Date and prior to the termination of Eligible Employee's employment with Carmike, Eligible Employee will become fully vested with respect to (i) the actual number of shares of Stock earned by Eligible Employee for each Performance Period completed prior to the Change in Control, as determined by the Committee pursuant to § 2, and (ii) the number of Target Shares as shown in § 1 for the Performance Period during which the Change in Control occurs and for each succeeding Performance Period covered by this Performance Share Certificate.

If Eligible Employee vests under this § 3(d), the Committee will make a Stock Grant to Eligible Employee for the number of shares of Stock described in this § 3(d) (i) within 30 days after the Change in Control if it is a Section 409A Change in Control or (ii) at the time described in § 3(a) if the Change in Control is not a Section 409A Change in Control unless Eligible Employee Separates from Service as a result of death or Disability prior to that time, in which case the Stock Grant will be made at the time described in § 3(b), or Eligible Employee has a Retirement prior to that time, in which case the Stock Grant will be made at the time described in § 3(c).

- (e) Forfeiture Upon Other Termination of Continuous Employment. If Eligible Employee's employment with Carmike terminates prior to the Vesting Date and prior to a Change in Control for any reason other than Eligible Employee's death, Disability or Retirement, Eligible Employee shall forfeit any opportunity to earn or interest in Target Shares under this Performance Share Certificate.
- (f) Six Month Delay for Specified Employees. To the extent that a Stock Grant is made as a result of Eligible Employee's Separation from Service on account of Disability or Retirement and at the time of such Separation from Service or Retirement, Eligible Employee is a "specified employee" as determined in accordance with Section 409A(a)(2)(B)(i) of the Code and the regulations thereunder, the Stock Grant will be delayed until the earlier of the

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first day of the seventh month after Eligible Employee' s Separation from Service or Retirement or the date of the Eligible Employee' s death.

- (g) Date of Grant. The Committee will determine the actual date of the Stock Grant within the applicable period specified under this § 3. In the event the applicable period spans more than one taxable year of Eligible Employee, Eligible Employee will have no right to designate the date of the Stock Grant.

3. By adding the following § 13:

**§ 13. Definitions.**

- (a) Cause. "Cause" shall (i) have the meaning assigned to such term in the employment agreement or separation agreement by and between Eligible Employee and Carmike or (ii) if Eligible Employee has not entered into such an agreement with Carmike, mean one or more of the following as determined in good faith by the Committee: (A) Eligible Employee is convicted of, pleads guilty to, or confesses or otherwise admits to any felony or any act of fraud, misappropriation or embezzlement or Eligible Employee otherwise engages in a fraudulent act or course of conduct; (B) there is any act or omission by Eligible Employee involving malfeasance or negligence in the performance of Eligible Employee' s duties and responsibilities for Carmike, or the exercise of Eligible Employee' s powers of an executive of Carmike, where such act or omission is reasonably likely to materially and adversely affect Carmike' s business; or (C) Eligible Employee breaches any agreement between Eligible Employee and Carmike or violates any provision of any code of conduct adopted by Carmike which applies to Eligible Employee, if the consequence of such violation of such code of conduct ordinarily would be a termination of employment with Carmike.
- (b) Disability. "Disability" means that Eligible Employee (i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, or (ii) is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of Carmike.

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- (c) Retirement Age. “Retirement Age” means the earlier of (i) the date on which Eligible Employee is age 55 or older and has completed 10 or more Years of Service and (ii) the date on which Eligible Employee is age 60 or older and has completed 5 or more Years of Service
  - (d) Retirement. “Retirement” means a Separation from Service on or after Retirement Age as a result of a voluntary termination of employment by Eligible Employee or an involuntary termination of employment by Carmike without Cause.
  - (e) Section 409A Change in Control. A “Section 409A Change in Control” means a Change in Control that also constitutes “a change in the ownership or effective control of” Carmike or a change in “the ownership of a substantial portion of the assets of” Carmike within the meaning of Section 409A(a)(2)(A)(v) and Treas. Reg. § 1.409A-3(i)(5).
  - (f) Separation from Service. A “Separation from Service” means a “separation from service” within the meaning of Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. § 1.409A-1(h).
  - (g) Stock Grant Event. “Stock Grant Event” means (i) the Vesting Date, (ii) the date an Eligible Employee has a Separation from Service as a result of death, Disability or Retirement and (iii) the date of a Section 409A Change in Control.
  - (h) Vesting Date. “Vesting Date” means (i) with respect to the 2012 Grant, March 15, 2015 or (ii) with respect to the 2013 Grant, February 28, 2016.
  - (i) Year of Service. “Year of Service” means for each Eligible Employee each “year of vesting service” as determined under the terms of the Carmike Cinemas 401(k) Plan.

4. By adding the following § 14:

**§ 14. Code Section 409A.** This agreement is intended to satisfy the requirements of Section 409A of the Code and shall be construed accordingly.

5. Except as otherwise expressly amended herein, the terms and conditions of the 2012 Grant and the 2013 Grant as in effect immediately before the effective date of this Amendment shall remain in full force and effect.

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**IN WITNESS WHEREOF**, Carmike and Eligible Employee have executed this Amendment Number One as of the date first set forth above.

**CARMIKE CINEMAS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

Date: May 15, 2013

**ELIGIBLE EMPLOYEE**

\_\_\_\_\_  
Name:

Date: May 15, 2013

The following executive officers have entered into this Amendment Number One to Option Certificate(s), a form of which follows, with Carmike Cinemas, Inc., with respect to the option grants indicated below:

<u>Name</u>	<u>Date</u>	<u>Shares</u>
S. David Passman III	June 4, 2009	200,000
	March 3, 2010	70,000
	March 11, 2011	70,000
Richard B. Hare	July 6, 2009	45,000
	March 3, 2010	25,000
	March 11, 2011	25,000
Fred W. Van Noy	December 18, 2003	35,000
	July 6, 2009	50,000
	March 3, 2010	28,000
	March 11, 2011	28,000
Daniel E. Ellis	August 1, 2011	15,000
John Lundin	January 25, 2010	15,000
	March 3, 2010	8,000
	March 11, 2011	8,000

**AMENDMENT NUMBER ONE TO OPTION CERTIFICATE[S]**

This Amendment Number One to [a] certain Option Certificate[s] described below (the “Option Certificate[s]”) is made and entered into as of May 15, 2013 by and between Carmike Cinemas, Inc. (“Carmike”) and (“Eligible Employee”). Capitalized terms not defined in this Amendment Number One shall have the meaning assigned to such terms in the relevant Option Certificate and plan document.

**WHEREAS**, Carmike and Eligible Employee desire to amend the terms and conditions of the Option Certificate[s];

**NOW, THEREFORE**, the Option Certificate[s] described below [is/are] hereby amended as follows, notwithstanding any provisions therein to the contrary, effective as of May 15, 2013:

1. Amendments to the Option Certificate for the Option to purchase \_\_\_\_\_ shares of Stock granted on December 18, 2003 in accordance with the Carmike Cinemas, Inc. Employee and Consultant Long-Term Stock Incentive Plan:

a) Section 3(b)(3) is amended to read as follows:

Other Reason. If Participant’ s employment by the Company or an Affiliate terminates for any reason (other than a reason described in § 3(b)(1) or § 3(b)(2)), his or her right, if any, under § 3(a) to exercise this NQO shall expire on the earlier of (A) the ninetieth (90th) day after his or her employment is so terminated or (B) the 10<sup>th</sup> anniversary of the Grant Date.

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b) Section 3(b) is amended to add a new paragraph (6) to read as follows:

(6) Retirement. If Participant voluntarily terminates employment with the Company or an Affiliate after Retirement Age or if the Company terminates Participant's employment with the Company or an Affiliate without Cause after Retirement Age, his or her right to exercise this Option shall expire on the earlier of (A) the third anniversary of the date his or her employment so terminates or (B) the 10<sup>th</sup> anniversary of the Grant Date.

c) Section 3(c) is amended to add the following new definitions at the end thereof:

(4) Retirement Age. The term "Retirement Age" means the earlier of (i) the date on which Participant is age 55 or older and has completed 10 or more Years of Service and (ii) the date on which Participant is age 60 or older and has completed 5 or more Years of Service.

(5) Year of Service. The term "Year of Service" means each "year of vesting service" as determined under the terms of the Carmike Cinemas 401(k) Plan.

2. Amendments to the Option Certificate for the Option to purchase \_\_\_\_\_ shares of Stock granted on June 4, 2009 in accordance with the Carmike Cinemas, Inc. 2004 Stock Incentive Plan (the "2004 Plan"):

a) Section 3(b)(ii) is amended to substitute "the year following the date his or her employment so terminates" for "one hundred eighty (180) days".

b) Section 3(b) is amended to add a new paragraph (v) to read as follows:

(v) Retirement. If Executive voluntarily terminates employment with the Carmike after Retirement Age or if Carmike terminates Executive's employment with Carmike without Cause after Retirement Age, his or her right to exercise this Option shall be fully vested and shall expire on the earlier of (A) the third anniversary of the date his or her employment so terminates or (B) the 10<sup>th</sup> anniversary of the Grant Date.

c) Section 3(c) is amended to add the following new definitions at the end thereof:

(4) Retirement Age. The term "Retirement Age" means the earlier of (i) the date on which Executive is age 55 or older and has completed 10 or more Years of Service and (ii) the date on which Executive is age 60 or older and has completed 5 or more Years of Service.

(5) Year of Service. The term "Year of Service" means each "year of vesting service" as determined under the terms of the Carmike Cinemas 401(k) Plan.

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3. Amendments to the Option Certificate for the Option to purchase shares of Stock granted on July 6, 2009 in accordance with the 2004 Plan:
- a) Section 3(b) is amended to add a new paragraph (4) to read as follows:
- (4) Retirement. If Eligible Employee voluntarily terminates employment with the Carmike after Retirement Age or if Carmike terminates Eligible Employee' s employment with Carmike without Cause after Retirement Age, his or her right to exercise this Option shall be fully vested and shall expire on the earlier of (A) the third anniversary of the date his or her employment so terminates or (B) the 10<sup>th</sup> anniversary of the Grant Date.
- b) Section 3(c) is amended to add the following new definitions at the end thereof:
- (4) Retirement Age. The term "Retirement Age" means the earlier of (i) the date on which Eligible Employee is age 55 or older and has completed 10 or more Years of Service and (ii) the date on which Eligible Employee is age 60 or older and has completed 5 or more Years of Service.
- (5) Year of Service. The term "Year of Service" means each "year of vesting service" as determined under the terms of the Carmike Cinemas 401(k) Plan.
4. Amendments to the Option Certificate for the Option to purchase shares of Stock granted on January 25, 2010 in accordance with the 2004 Plan:
- a) Section 3(b) is amended to add a new paragraph (4) to read as follows:
- (4) Retirement. If Eligible Employee voluntarily terminates employment with the Carmike after Retirement Age or if Carmike terminates Eligible Employee' s employment with Carmike without Cause after Retirement Age, his or her right to exercise this Option shall be fully vested and shall expire on the earlier of (A) the third anniversary of the date his or her employment so terminates or (B) the 10<sup>th</sup> anniversary of the Grant Date.
- b) Section 3(c) is amended to add the following new definitions at the end thereof:
- (4) Retirement Age. The term "Retirement Age" means the earlier of (i) the date on which Eligible Employee is age 55 or older and has completed 10 or more Years of Service and (ii) the date on which Eligible Employee is age 60 or older and has completed 5 or more Years of Service.
- (5) Year of Service. The term "Year of Service" means each "year of vesting service" as determined under the terms of the Carmike Cinemas 401(k) Plan.

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5. Amendments to the Option Certificate for the Option to purchase shares of Stock granted on March 3, 2010 in accordance with the 2004 Plan:
- a) Section 3(b) is amended to add a new paragraph (4) to read as follows:
- (4) Retirement. If Eligible Employee voluntarily terminates employment with the Carmike after Retirement Age or if Carmike terminates Eligible Employee's employment with Carmike without Cause after Retirement Age, his or her right to exercise this Option shall be fully vested and shall expire on the earlier of (A) the third anniversary of the date his or her employment so terminates or (B) the 10<sup>th</sup> anniversary of the Grant Date.
- b) Section 3(c) is amended to add the following new definitions at the end thereof:
- (4) Retirement Age. The term "Retirement Age" means the earlier of (i) the date on which Eligible Employee is age 55 or older and has completed 10 or more Years of Service and (ii) the date on which Eligible Employee is age 60 or older and has completed 5 or more Years of Service.
- (5) Year of Service. The term "Year of Service" means each "year of vesting service" as determined under the terms of the Carmike Cinemas 401(k) Plan.
6. Amendments to the Option Certificate for the Option to purchase shares of Stock granted on March 11, 2011 in accordance with the 2004 Plan:
- a) Section 3(b)(2) is amended to add the following to the end thereof:
- Eligible Employee shall be fully vested if his or her employment with Carmike terminates by reason of his or her death or Disability (as defined in § 3(c)).
- b) Section 3(b) is amended to add a new paragraph (4) to read as follows:
- (4) Retirement. If Eligible Employee voluntarily terminates employment with the Carmike after Retirement Age or if Carmike terminates Eligible Employee's employment with Carmike without Cause after Retirement Age, his or her right to exercise this Option shall be fully vested and shall expire on the earlier of (A) the third anniversary of the date his or her employment so terminates or (B) the 10<sup>th</sup> anniversary of the Grant Date.
- c) Section 3(c) is amended to add the following new definitions at the end thereof:
- (4) Retirement Age. The term "Retirement Age" means the earlier of (i) the date on which Eligible Employee is age 55 or older and has completed 10 or more Years of Service and (ii) the date on which Eligible Employee is age 60 or older and has completed 5 or more Years of Service.
- (5) Year of Service. The term "Year of Service" means each "year of vesting service" as determined under the terms of the Carmike Cinemas 401(k) Plan.



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7. Amendments to the Option Certificate for the Option to purchase shares of Stock granted on August 1, 2011 in accordance with the 2004 Plan:
- a) Section 3(b)(2) is amended to add the following to the end thereof:
- Eligible Employee shall be fully vested if his or her employment with Carmike terminates by reason of his or her death or Disability (as defined in § 3(c)).
- b) Section 3(b) is amended to add a new paragraph (4) to read as follows:
- (4) Retirement. If Eligible Employee voluntarily terminates employment with the Carmike after Retirement Age or if Carmike terminates Eligible Employee's employment with Carmike without Cause after Retirement Age, his or her right to exercise this Option shall be fully vested and shall expire on the earlier of (A) the third anniversary of the date his or her employment so terminates or (B) the 10<sup>th</sup> anniversary of the Grant Date.
- c) Section 3(c) is amended to add the following new definitions at the end thereof:
- (4) Retirement Age. The term "Retirement Age" means the earlier of (i) the date on which Eligible Employee is age 55 or older and has completed 10 or more Years of Service and (ii) the date on which Eligible Employee is age 60 or older and has completed 5 or more Years of Service.
- (5) Year of Service. The term "Year of Service" means each "year of vesting service" as determined under the terms of the Carmike Cinemas 401(k) Plan.
8. Except as otherwise expressly amended herein, the terms and conditions of the Option Certificate[s] described above as in effect immediately before the effective date of this Amendment shall remain in full force and effect.

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**IN WITNESS WHEREOF**, Carmike and Eligible Employee have executed this Amendment Number One as of the date first set forth above.

**CARMIKE CINEMAS, INC.**

By: \_\_\_\_\_

Name:

Title:

Date: May 15, 2013

**ELIGIBLE EMPLOYEE**

\_\_\_\_\_  
Name:

Date: May 15, 2013